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ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on December 9, 2021, at 1:00 p .m. in room 149 Capitol Annex.

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Title		Chapter	Regulation
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The following agenda may not take into consideration all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies. Deferrals and withdrawals may be made any time prior to or during the meeting.

Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Thursday, December 9, 2021 at 1 p.m.
Annex Room 149

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2. REGULATIONS FOR COMMITTEE REVIEW

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Adult Education and Literacy
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013 KAR 003:020. Provision of instruction for individuals sentenced by a court to participate in educational programs. (Deferred from November)
013 KAR 003:030. Qualifications for progressing satisfactorily through a GED preparation program. (Deferred from November)
013 KAR 003:040. GED Incentives Program. (Deferred from November)
013 KAR 003:050. GED eligibility requirements. (Deferred from November)
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016 KAR 002:050. Certificates for teachers of exceptional children/communication disorders.

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031 KAR 003:010. Current address of Kentucky registered voters and distribution of voter registration lists. (Deferred from August)

Forms and Procedures
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031 KAR 004:200E. Chain of custody for records during an election contest. (Filed with Ordinary) ("E" expires 04-20-2022) (Not Amended After Comments) (Deferred from October)

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803 KAR 001:075. Exclusions from minimum wage and overtime. (Deferred from September)
803 KAR 001:080. Board, lodging, gratuities and other allowances. (Deferred from September)
803 KAR 001:090. Workers with disabilities and work activity centers' employee's wages. (Not Amended After Comments) (Deferred from November)

Department of Workers' Claims
803 KAR 025:305E. Workers' compensation expedited hearings pursuant to occupational exposure to COVID-19. ("E" expires 06-25-2022)

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
Licensing
804 KAR 004:212. In-State Distilled Spirits Supplier License.
804 KAR 004:221. Alternating proprietorship agreements.
804 KAR 004:251. Special temporary licenses.
804 KAR 004:480. License surrender.

Department of Insurance
Kinds of Insurance; Limits of Risk; Reinsurance
806 KAR 005:025. Credit for reinsurance.

Kentucky Horse Racing Commission
Standardbred Racing
810 KAR 005:030. Claiming races.
810 KAR 005:060. Entries and starters.
810 KAR 005:070. Running of the race.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Telehealth Services
Telehealth
900 KAR 012:005. Telehealth terminology and requirements. (Filed with Emergency) (Amended After Comments)

Department for Public Health
Communicable Diseases
902 KAR 002:020. Reportable disease surveillance.

902 KAR 002:230E. COVID-19 antibody administration center. ("E" expires 06-28-2022)
902 KAR 002:240E. COVID-19 test acquisition and distribution. ("E" expires 06-28-2022)
902 KAR 002:250E. COVID-19 vaccine storage. ("E" expires 06-28-2022)

Sanitation
902 KAR 010:120. Kentucky public swimming and bathing facilities. (Amended After Comments)
902 KAR 010:121. Plan review, annual permitting, and inspection fees for public swimming and bathing facilities, including splash pads operated by local governments.
902 KAR 010:190. Splash pads operated by local governments. (Amended After Comments)

Health Services and Facilities
902 KAR 020:081. Operations and services; home health agencies.
902 KAR 020:460E. Essential visitor programs; visitation guidelines for long-term care facilities. ("E" expires 06-28-2022)

Office of Inspector General
Division of Health Care
906 KAR 001:180. Operation and services; personal services agencies.

Department for Medicaid Services
Medicaid Services
907 KAR 001:005. Nonduplication of payments.
907 KAR 001:030. Home health agency services.
907 KAR 001:604. Cost-sharing prohibited within the Medicaid program.

Hospital Service Coverage and Reimbursement
907 KAR 010:815. Per Diem inpatient hospital reimbursement. (Amended After Commnets)
907 KAR 010:830. Acute care inpatient hospital reimbursement.

Outpatient Pharmacy Program
907 KAR 023:020. Reimbursement for outpatient drugs. (Filed with Emergency) (Amended After Comments)

Department for Aging and Independent Living
Office of Dementia Services
910 KAR 004:010. Alzheimer's and dementia services curriculum review and approval.

Department for Community Based Services
Protection and Permanency
922 KAR 001:565. Service array for a relative or fictive kin caregiver.

1. REGULATIONS REMOVED FROM DECEMBER'S AGENDA

SECRETARY OF STATE
Corporations
030 KAR 001:011. Repeal of 30 KAR 1:010, 30 KAR 1:020, 30 KAR 1:040, and 30 KAR 1:050. (Withdrawn by agency, 11-15-2021)

STATE BOARD OF ELECTIONS
Forms and Procedures
031 KAR 004:195. Consolidation of precincts and precinct election officers. (Filed with Emergency) (Comments Received, SOC not filed)
031 KAR 004:200. Chain of custody for records during an election contest. (Filed with Emergency) (Comments Received, SOC not filed)

Voting
031 KAR 005:025. Ballot standards and election security. (Filed with Emergency) (Comments Received, SOC not filed)

BOARDS AND COMMISSIONS
Board of Pharmacy
201 KAR 002:430. Emergency orders and hearings. (Comments Received, SOC ext.; due 12-15-2021)

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
Game
301 KAR 002:082. Transportation and holding of live exotic wildlife. (Comments Received; SOC ext. due 12-15-2021)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Board of Education
General Administration
702 KAR 001:191. District Employee Quarantine Leave. (Filed with Emergency) (Comments Received, SOC ext.; due 12-15-2021)

Department for Libraries and Archives
Archives
725 KAR 001:010. Records officers; duties. (Deferred from October)
725 KAR 001:020. Recording and reproducing public records. (Deferred from October)
725 KAR 001:025. Transfer of public records. (Deferred from October)
725 KAR 001:030. Scheduling public records for retention and disposal; procedures. (Deferred from October)

725 KAR 001:040. Collection and distribution of reports and publications. (Deferred from October)
725 KAR 001:050. Records management program. (Deferred from October)
725 KAR 001:061. Records retention schedules; authorized schedules. (Deferred from October)

Libraries
725 KAR 002:015. Public library facilities construction. (Deferred from October)
725 KAR 002:080. Interstate Library Compact. (Deferred from October)

Kentucky Commission on Proprietary Education
791 KAR 001:010. Applications, permits, and renewals. (Deferred from November)
791 KAR 001:020. Standards for licensure. (Deferred from November)
791 KAR 001:025. Fees. (Deferred from November)
791 KAR 001:027. School record keeping requirements (Deferred from November)
791 KAR 001:030. Procedures for hearings. (Deferred from November)
791 KAR 001:035. Student protection fund. (Deferred from November)
791 KAR 001:040. Commercial driver license training school curriculum and refresher course. (Deferred from November)
791 KAR 001:050. Application for license for commercial driver license training school. (Deferred from November)
791 KAR 001:060. Application for renewal of license for commercial driver license training school. (Deferred from November)
791 KAR 001:070. Commercial driver license training school instructor and agency application and renewal procedures. (Deferred from November)
791 KAR 001:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver license training schools. (Deferred from November)
791 KAR 001:100. Standards for Kentucky resident commercial driver training school facilities. (Deferred from November)
791 KAR 001:150. Bond requirements for agents and schools. (Deferred from November)
791 KAR 001:155. School closing process. (Deferred from November)
791 KAR 001:160. Transfer of ownership, change of location, change of name, revision of existing programs. (Deferred from November)

PUBLIC PROTECTION CABINET
Department of Insurance
Health Insurance Contracts
806 KAR 017:350. Life insurance and managed care. (Deferred from October)

Expiration dates in this document have been determined pursuant to KRS Chapter 13A provisions. Other statutes or legislation may affect a regulation's actual end date.

STANDARD ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed under KRS Chapter 13A, As Amended by 2021 Legislation

(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

NOTE: Pursuant to KRS 13A.190, 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 2021 legislation including: Regular Session legislation: House Joint Resolution 77; KRS Chapter 39A, as amended by Senate Bill 1; and by KRS Chapters 13A and 214, as amended by Senate Bill 2; or Special Session legislation: House Joint Resolution 1; or KRS Chapter 13A as amended by Senate Bill 1 and Senate Bill 2.

STATEMENT OF EMERGENCY
30 KAR 5:011E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. This regulation is necessary pursuant to KRS 355.9-526 to ensure continued compliance with state law, to protect the public welfare by maintaining Uniform Commercial Code secured transaction filing procedures that are congruent with the actual filing practices of the Office of the Secretary of State, and are in harmony with the rules and practices of filing offices in other jurisdictions that enacted Article 9 of the Uniform Commercial Code and the International Association of Commercial Administrators (IACA) Model Administrative Rules for filing under that article. This emergency administrative regulation will be replaced by an ordinary administrative regulation once the ordinary regulation becomes effective. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
MICHAEL G. ADAMS, Secretary of State

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(New Emergency Administrative Regulation)

30 KAR 5:011E. Definitions for 30 KAR Chapter 5.

EFFECTIVE: October 29, 2021
RELATES TO: KRS Chapter 355.9
STATUTORY AUTHORITY: KRS 355.9-526(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the definitions for those administrative regulations.

Section 1. Definitions. (1) “Active Record” means a UCC record stored in the UCC information management system and indexed in, but not yet removed from, the searchable index.

(2) "Address" means either:

(a) A street address, route number or post office box number plus the city, state and zip code; or

(b) An address that purports to be a mailing address outside of the United States of America.

(3) “Amendment” means a UCC record that relates to an initial financing statement, including party or collateral changes, assignments, continuations, and terminations.

(4) “Assignment” means an amendment that assigns all or part of a secured party’s power to authorize an amendment to a financing statement.

(5) “Delivery” means communication of a tangible UCC record.

(6) “Filer” means a person who communicates a UCC record to the filing office for filing.(7) “Filing office” means the Office of the Kentucky Secretary of State.

(8) “Filing office statement” means a statement entered into the filing office’s information management system to correct an error made by the filing office.

(9) “Information statement” means a UCC record that indicates a financing statement is inaccurate or wrongfully filed.

(10) “Individual debtor name” means any name provided as a debtor name in a UCC record in a format that identifies the name as that of the debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(11) “Initial financing statement” means a UCC record that causes the filing office to establish the initial record of filing of a financing statement.

(12) “Remitter” means a person who delivers a tangible UCC record to the filing office for filing and awaits an immediate determination as to whether the UCC record will be accepted or rejected.

(13) “Searchable index” means the retrievable list of individual debtor names and organization debtor names together with associated file numbers the filing office maintains in the UCC information management system as active records.

(14) “Secured party of record” means a secured party as defined in KRS 355.9-102(1)(bu) who meets the additional requirements established in KRS 355.9-511.

(15) “Tangible UCC record” means a UCC record that has been printed on paper.

(16) “Time of filing” means the time of day on the date a UCC record is deemed filed under this regulation.

(17) “UCC” means the Uniform Commercial Code as adopted in the Commonwealth of Kentucky.

(18) “UCC information management system” means the computer system used by the filing office to store, index, and retrieve information relating to financing statements as required by 30 KAR 5:041E.

(19) “UCC record” means an initial financing statement, an affidavit of wrongfully filed record, an amendment, a filing office statement, or an information statement and includes a record thereof maintained by the filing office. The term shall not be deemed to refer exclusively to paper or paper-based writings.

(20) “Unlapsed record” means a UCC record that has been stored and indexed in the UCC information management system and that has not yet lapsed under KRS 355.9-515 with regard to all secured parties of record.

MICHAEL G. ADAMS, Secretary of State
APPROVED BY AGENCY: October 21, 2021
FILED WITH LRC: October 29, 2021 at 1:32 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 December 31, 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: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes definitions for 30 KAR Chapter 5.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526

by establishing definitions for purposes of filing office rules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, and model UCC regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by establishing clearly defined terms with regard to administrative regulations governing the filing, indexing, and retrieval of UCC records.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statues: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the Office of the Secretary of State and any individual, business, organization, or governmental entity that files or conducts a search of UCC records.

(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 Office of the Secretary of State already utilizes the definitions contained in this administrative regulation. Other individuals or entities identified in question (3) may need to familiarize themselves with the contents of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does not establish any new fees and the Office of the Secretary of State will not incur any additional costs to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty with regard to terms used in administrative regulations governing the filing, search, and retrieval of UCC records.

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

(a) Initially: There will be no cost to implement this administrative regulation. The Office of Secretary of State currently utilizes these definitions.

(b) On a continuing basis: There will be minimal to no costs to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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 Office of the Secretary of State and units, parts, or divisions of state or local government to the extent those entities are a party to a UCC record filed with the Office of the Secretary of State.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526.

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.

(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? There will be minimal to no additional cost to administer this program for the first year. The Office of Secretary of State currently utilizes the definitions contained in this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency to administer the processing and approval or refusal of UCC filings under Article 9 or to other state and local agencies to file those records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
30 KAR 5:021E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. This regulation is necessary pursuant to KRS 355.9-526 to ensure continued compliance with state law, to protect the public welfare by maintaining Uniform Commercial Code secured transaction filing procedures that are congruent with the actual filing practices of the Office of the Secretary of State, and are in harmony with the rules and practices of filing offices in other jurisdictions that enacted Article 9 of the Uniform Commercial Code and the International Association of Commercial Administrators (IACA) Model Administrative Rules for filing under that article. This emergency administrative regulation will be replaced by an ordinary administrative regulation once the ordinary regulation becomes effective. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
MICHAEL G. ADAMS, Secretary of State

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(New Emergency Administrative Regulation)

30 KAR 5:021E. Filing methods and forms.

EFFECTIVE: October 29, 2021
RELATES TO: KRS 355.9, 355.9-516, 355.9-521

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the general provisions for 30 KAR Chapter 5 governing delivery, approved forms, payments and public services.

Section 1. UCC records may be communicated to the filing office as follows:

(1) Direct data entry using the online filing system of the filing office. The time of filing for a UCC record communicated by this method shall be when the entry of all required elements of the UCC record in the proper format is accepted by the online filing system.

(2) Email to the email address designated by the filing office website. The time of filing for a UCC record communicated by this method shall be when the email communicating the UCC record is first received by the filing office.

(3) Personal delivery by remitter at the physical address of the filing office. The time of filing for a UCC record delivered by this method shall be when a UCC record is accepted for filing by the filing office.

(4) Delivery of a UCC record other than by remitter at the filing office physical address. The time of filing for a UCC record delivered by this method shall be 4:30 p.m. on the date the record was delivered to the filing office.

Section 2. (1) Information submitted to the filing office shall be provided using only characters that appear on the American standard keyboard. A financing statement or amendment form shall designate separate fields for:

(a) Organization names; and

(b) Individual names. Individual name fields shall include surname, first personal name, additional names, initials, and suffixes for individual names.

(2) (a) The appropriate box on a financing statement shall be marked to indicate when:

1. An initial financing statement is being filed in connection with a manufactured home;

2. An initial financing statement is being filed in connection with a public finance transaction; or

3. An initial financing statement is being filed against a debtor that is a transmitting utility.

(b) If the requirements of this section are not met, the filing shall not affect the filing office's determination of the lapse date under 30 KAR 5:041E, Section 7.

Section 3. Paper-based forms identified in Section 6, or any form that is substantially the same, shall be utilized for the purpose for which the form is designated.

Section 4. Filing fees may be paid by the following methods:

(1) Debit and credit cards issued by approved issuers;

(2) Electronic checks processed under National Automated Clearing House Association ("NACHA") rules and arrangements;

(3) Prepaid account upon the submission and approval of an Application for Prepaid Account and payment of an amount not less than $250;

(4) Personal checks, cashier's checks, certified checks, and money orders made payable to the Kentucky State Treasurer;

(5) Cash; and

(6) Interaccount from Kentucky state agencies.

Section 5. (1) The filing fee for a UCC record shall be determined by KRS 355.9-525.

(2) The filing office shall refund the amount of an overpayment.

Section 6. (1) The following forms are incorporated by reference:

(a) "Application for Prepaid Account" (10/5/11);

(b) "UCC Financing Statement (Form UCC1), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);

(c) "UCC Financing Statement Addendum (Form UCC1Ad), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);

(d) "UCC Financing Statement Additional Party (Form UCC1AP Rev. 8/22/11), International Association of Commercial Administrators (IACA)";

(e) "UCC Financing Statement Amendment (Form UCC3), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);

(f) "UCC Financing Statement Amendment Addendum (Form UCC3Ad), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);

(g) "UCC Financing Statement Amendment Additional Party (Form UCC3AP), International Association of Commercial Administrators (IACA)" (Rev. 8/22/11);

(h) "Information Statement (Form UCC5), International Association of Commercial Administrators (IACA)" (Rev. 7/19/12);

(i) "Information Request (Form UCC11)" (Rev. 7/19/12);

(j) "Affidavit of Wrongfully Filed Record" (9/16/21); and

(k) "Request for Secured Party Name Search Form" (6/21).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Secretary of State, Office of Business Services, Records Section, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: October 29, 2021 at 1:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 December 31, 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: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes methods for communicating UCC records to the Secretary of State filing office, establishes required forms, the content of those forms, and acceptable forms of payment for required filing fees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing filing office rules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, and model UCC regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by establishing filing office rules.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative

regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statues: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects any individual, business, organization, or governmental entity that files or conducts a search of UCC records.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals or entities identified in question (3) will have to familiarize themselves with the contents of this regulation and incorporated forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals or entities identified in question (3) will incur costs in direct correlations to the number of UCC records they file, or search, in accordance with statutory or regulatory fees. This regulation itself does not establish any new fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty as to filing methods and forms for UCC filings or UCC record searches made with the Office of the Secretary of State.

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

(a) Initially: There will be no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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 units, parts or divisions of state or local government to the extent they file or search UCC records.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526.

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.

(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? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency to administer the filing, indexing and retrieval of UCC records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
30 KAR 5:031E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. This regulation is necessary pursuant to KRS 355.9-526 to ensure continued compliance with state law, to protect the public welfare by maintaining Uniform Commercial Code secured transaction filing procedures that are congruent with the actual filing practices of the Office of the Secretary of State, and are in harmony with the rules and practices of filing offices in other jurisdictions that enacted Article 9 of the Uniform Commercial Code and the International Association of Commercial Administrators (IACA) Model Administrative Rules for filing under that article. This emergency administrative regulation will be replaced by an ordinary administrative regulation once the ordinary regulation becomes effective. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
MICHAEL G. ADAMS, Secretary of State

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(New Emergency Administrative Regulation)

30 KAR 5:031E. Acceptance and refusal of records.

EFFECTIVE: October 29, 2021

RELATES TO: KRS. KRS 355.9-513A, 355.9-515, 355.9-516, 355.9-516A, 355.9-520, 446.030

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the requirements relating to the acceptance and refusal of records.

Section 1. The filing office shall refuse to accept a UCC record for any reason, or multiple reasons pursuant to KRS 355.9-516. The filing office may refuse to accept a UCC record pursuant to KRS 355.9-516A.

Section 2. Except for UCC records rejected under KRS 355.9-516A of this administrative regulation, the duties and responsibilities of the filing office with respect to the administration of the UCC shall be ministerial. In accepting for filing or refusing to file a UCC record the filing office shall not:

(1) Determine the legal effect of the UCC record;

(2) Determine that information in the record is correct or

incorrect, in whole or in part; or

(3) Create a presumption that information in the record is correct or incorrect, in whole or in part.

Section 3. (1) A continuation statement may be filed: six (6) months preceding the month in which the financing statement would lapse and on the date that corresponds with the date the financing statement would lapse or if there is no corresponding date, on the last day of that month.

(2) The last day on which a continuation statement may be filed shall be the date upon which the related financing statement lapses, or the next business day the filing office is open for business.

Section 4. (1) If the filing office finds grounds to refuse a UCC record, the filing office shall refund the filing fee and return the record or a copy of the record in accordance with KRS 355.9-520(2).

(2) The reason or reasons for the refusal and other related information shall be made to the filer as soon as practicable, but no later than two (2) business days after the refused UCC record was received by the filing office. This information shall be provided by the same method by which the UCC record was communicated to the filing office, by mail, or by a more expeditious means.

(3) Records of refusal, including a copy of the refused UCC record and the grounds for refusal, shall be maintained until the first anniversary of the lapse date that applies or would have applied to the related financing statement, assuming that the refused record had been accepted and filed.

Section 5. The filing office may communicate to a filer that the filing office noticed potential defects in a UCC record, whether or not it was filed or refused for filing.

Section 6. If a filer believes that a UCC record that was refused for filing should not have been refused, the filer may contact the filing office to request a review of the refusal decision. The filer shall provide a copy of the refused record and a statement of the basis for the belief that the filing office wrongfully refused to file the record. Upon receipt of a request for review, the filing office shall investigate the claim. If the filing office confirms that the record should have been refused, the filing office shall provide a written explanation of the grounds for refusal. If it is determined that the filing office refused to accept the record in error, the filing office shall file the UCC record with the filing date and time the UCC record was originally communicated for filing. A filing office statement relating to the relevant financing statement shall be placed in the UCC information management system on the date that the corrective action was taken. The filing office statement shall provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the financing statement maintained in the UCC information management system.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: October 29, 2021 at 1:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 December 31, 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: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures governing the acceptance and refusal of UCC records submitted for filing with the Office of the Secretary of State.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing filing office rules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, and model UCC regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by establishing filing office rules and providing uniformity and certainty with regard to the acceptance or refusal of UCC records submitted for filing.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statues: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects any individual, business, organization, or governmental entity that files UCC records.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals or entities identified in question (3) will have to familiarize themselves with the contents of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals or entities identified in question (3) will incur costs in direct correlation to the number of UCC records they file and in accordance with statutorily established fees. This regulation does not establish any new fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty as to the acceptance or refusal of UCC filings made with the Office of the Secretary of State.

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

(a) Initially: There will be no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

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

administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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 units, parts, or divisions of state or local government to the extent those entities submit a UCC record for filing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526.

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.

(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? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency to administer the filing, indexing, and retrieval of UCC records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
30 KAR 5:041E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. This regulation is necessary pursuant to KRS 355.9-526 to ensure continued compliance with state law, to protect the public welfare by maintaining Uniform Commercial Code secured transaction filing procedures that are congruent with the actual filing practices of the Office of the Secretary of State, and are in harmony with the rules and practices of filing offices in other jurisdictions that enacted Article 9 of the Uniform Commercial Code and the International Association of Commercial Administrators (IACA) Model Administrative Rules for filing under that article. This emergency administrative regulation will be replaced by an ordinary administrative regulation once the ordinary regulation becomes effective. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
MICHAEL G. ADAMS, Secretary of State

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(New Emergency Administrative Regulation)

30 KAR 5:041E. UCC Information management system.

EFFECTIVE: October 29, 2021

RELATES TO: KRS Chapter 355.9-515, 355.9-519, 355.9-526

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the requirements for the UCC information management system.

Section 1. The filing office shall use an information management system to store, index, and retrieve information relating to financing statements.

Section 2. (1) Individual debtor names shall be stored in data files that include only the individual debtor names, and not organization debtor names. Separate data entry fields shall be established for surnames, first personal names, and additional names or initials and suffixes.

(2) The filing office shall enter a name into the corresponding data entry field of the UCC information management system exactly as it appears on a UCC record.

(3) Individual name fields in the UCC information management system shall be fixed to fifty (50) characters in length by the filing office. A name that exceeds the fixed length shall be truncated after it exceeds the maximum length of the data entry field.

Section 3. (1) Upon the filing of an amendment, the names of the parties indexed in the UCC information management system remain unchanged, except that in the case of an amendment that adds a debtor or a secured party, the new debtor or new secured party shall be added to the appropriate index and associated with the record of the financing statement in the UCC information management system. An amendment that designates an assignee shall cause the assignee to be added as a secured party of record with respect to the affected financing statement in the UCC information management system. The filing of an amendment that deletes a debtor or a secured party from a financing statement shall not delete data from the UCC information management system.

(2) Except in the case of a continuation statement, the filing of an amendment shall not affect the period of effectiveness of the financing statement.

Section 4. The filing of a termination statement shall not cause an active record to be removed from the searchable index.

Section 5. An information statement may be filed prior to the lapse of the financing statement to which it relates but shall have no effect upon the information indexed in the UCC information management system.

Section 6. A filing office statement shall affect the indexing of parties and of the relevant financing statement as provided in the corrective action described in the filing office statement.

Section 7. If no timely filing of a continuation statement is filed, a financing statement lapses on its lapse date but shall remain indexed as an active record for one (1) year, after which the filing office shall remove the financing statement and all related UCC records from the searchable index. Upon the removal from the searchable index, the removed UCC records shall cease to be active records.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: October 29, 2021 at 1:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 December 31, 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: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures governing the establishment of a UCC information management system and the procedures for managing data entered into that system.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing filing office rules and to comply with KRS 355.9-519, relating to numbering, maintaining, and indexing UCC records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, model UCC regulations, and KRS 355.9-519

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by establishing filing office rules and providing uniformity and certainty with regard to the maintenance and retrievability of UCC records.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statues: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects any individual, business, organization or governmental entity that has submitted a UCC record for filing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals or entities identified in question (3) will have to familiarize themselves with the contents of this regulation if they are a party to a UCC financing statement and need to search or retrieve UCC records.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does not establish any new fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty with regard to the storage, indexing, and retrieval of UCC records on file with the Office of the Secretary of State.

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

(a) Initially: There will be no cost to implement this administrative regulation. The UCC information management is currently established.

(b) On a continuing basis: There will be minimal to no costs to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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 units, parts, or divisions of state or local government to the extent those entities are a party to or conduct a search of UCC records.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526 and KRS 355.9-519.

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.

(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? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency to administer the filing, indexing, and retrieval of UCC records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
30 KAR 5:051E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. This regulation is necessary pursuant to KRS 355.9-526 to ensure continued compliance with state law, to protect the public welfare by maintaining Uniform Commercial Code secured transaction filing procedures that are congruent with the actual filing practices of the Office of the Secretary of State, and are in harmony with the rules and practices of filing offices in other jurisdictions that enacted Article 9 of the Uniform Commercial Code and the International Association of Commercial Administrators (IACA) Model Administrative Rules for filing under that article. This emergency administrative regulation will be replaced by an ordinary administrative regulation once the ordinary regulation becomes effective. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
MICHAEL G. ADAMS, Secretary of State

CABINET FOR GENERAL GOVERNMENT
Department of State
Office of Business Services
(New Emergency Administrative Regulation)

30 KAR 5:051E. Filing, indexing, and data entry procedures.

EFFECTIVE: October 29, 2021
RELATES TO: KRS 355.9-515, 355.9-519, 355.9-526
STATUTORY AUTHORITY: KRS 355.9-526(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes requirements relating to filing, indexing, and data entry procedures.

Section 1. Data shall be entered into the UCC information management system exactly as provided in a UCC record, without regard to apparent errors.

Section 2. The filing office shall compare data from tangible UCC records with data entered by the filing office to verify accurate data entry.

Section 3. The filing office shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

Section 4. The filing office shall, to the extent reasonably possible, redact certain personal information from the information it provides to searchers and bulk data purchasers in accordance with applicable privacy and identity theft protection laws.

Section 5. The filing office may correct data entry and indexing errors of filing office personnel in the UCC information management system at any time. If a correction is made to a UCC record the filing office shall associate a filing office statement with the corrected UCC record in the UCC information management system on the date that the corrective action was taken. The filing office statement shall provide the date the filing office statement was filed and an explanation of the correction.

MICHAEL G. ADAMS, Secretary of State
APPROVED BY AGENCY: October 21, 2021
FILED WITH LRC: October 29, 2021 at 1:32 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 December 31, 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: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes filing, indexing, and data entry procedures for the Office of the Secretary of State with regard to UCC records.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing filing office rules.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, and model UCC regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by establishing filing office rules and providing uniformity and certainty with regard to filing, indexing, and data entry procedures for UCC records on file with the Office of the Secretary of State.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statues: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the Office of the Secretary of State and any individual, business, organization or governmental entity that files or searches UCC records.
(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 Office of the Secretary of State already follows the procedures contained in this administrative regulation. Other individuals or entities identified in question (3) may need to familiarize themselves with the contents of this regulation if they are a party to a UCC financing statement.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does not establish any new fees and the Office of the Secretary of State will not incur any additional costs to comply with this regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty with regard to filing, indexing and data entry procedures with regard to UCC records on file with the Office of the

Secretary of State.

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

(a) Initially: There will be no cost to implement this administrative regulation. The Office of Secretary of State currently follows these procedures.

(b) On a continuing basis: There will be minimal to no costs to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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 Office of the Secretary of State and units, parts or divisions of state or local government to the extent those entities submit a UCC record for filing or conduct a search of UCC records.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526.

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.

(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? There will be no additional cost to administer this program for the first year. The Office of Secretary of State currently follows the procedures set forth in this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency to administer the processing and approval or refusal of UCC filings under Article 9 or to other state and local agencies to file those records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
30 KAR 5:060E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. This regulation is necessary pursuant to KRS 355.9-526 to ensure continued compliance with state law, to protect the public welfare by maintaining Uniform Commercial Code secured transaction filing procedures that are congruent with the actual filing practices of the Office of the Secretary of State, and are in harmony with the rules and practices of filing offices in other jurisdictions that enacted Article 9 of the Uniform Commercial Code and the International Association of Commercial Administrators (IACA) Model Administrative Rules for filing under that article. This emergency administrative regulation will be replaced by an ordinary administrative regulation once the ordinary regulation becomes effective. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
MICHAEL G. ADAMS, Secretary of State

CABINET FOR GENERAL GOVERNMENT
Department of State
Office of Business Services
(Emergency Amendment)

30 KAR 5:060E. Search requests, [~~and~~] reports, and copies.

EFFECTIVE: October 29, 2021

RELATES TO: KRS 355.9-519, 355.9-523, 355.9-525

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the procedures for public access to UCC records [~~requirements governing search requests and reports~~].

Section 1. [~~General Requirements.~~] The filing office[~~officer~~] shall maintain [~~for public inspection~~] a searchable index of active records in the UCC information management system. Active records shall be retrievable by the name of the debtor or by the file number of the related initial financing statement. [~~Regardless of the retrieval method, the following shall be retrieved:~~

~~(1) The initial financing statement; and~~

~~(2) Each active record related to the initial financing statement.~~]

Section 2. [~~Search Requests – Required Information.~~] (1) A [~~Search~~] request[~~requests~~] for certified search results shall be submitted on a completed UCC Information Request Form UCC-11 together with the fee in accordance with KRS 355.9-525(3). [~~include the following:~~

~~(1) Name searched. A search request shall set forth the name of the debtor to be searched using designated fields for organization or individual surname, first personal name, and additional names or initials.~~] A search request shall be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field[~~, without regard to the nature or character of the debtor that is subject of the search~~].[

~~(2) Requesting party. The search request shall include the name and address of the person to whom the search report is to be sent.~~

~~(3) Fee. The five (5) dollar fee shall be tendered, in accordance with KRS 355.9-525(3), if the request is in writing.~~

~~(4) Search Logic. The request shall specify if a search methodology other than that described in Section 4 of this administrative regulation is to be applied in conducting the search. If methodology is not specified, the methodology described in Section 4 of this administrative regulation shall be applied.~~

~~Section 3. Search Requests - Optional Information.~~] (a) A

search request submitted under this subsection may include the following:

1.[(1)] A request for copies. [The request may limit the copies of UCC records that would normally be provided with a search report by requesting that no copies be provided or that copies be limited to those UCC records that:

(a) Include a particular debtor address;

(b) Include a particular city in the debtor address;

(c) Were filed on a particular date or within a particular range of dates; or

(d) Include a particular secured party name.]

2.[(2) Scope of search.] A request[requesting party may ask] for [a search that reports] all unlapsed[active] records retrieved by the search, rather than only active[unlapsed] records [retrieved by the search].

(b)[(3) Mode of delivery.] A search request submitted under this subsection may specify a method[mode] of delivery for search results. This request shall be honored if the requested method[mode] is acceptable to [made available by] the filing office, and provided by the requesting party together with all prepaid [requisite] fees[, under KRS 355.9-525(3), are tendered].

(2) A request for uncertified search results may be submitted online through the filing office website on the webpage designated by the filing office for that purpose.

(3) A request for search results by secured party name may be submitted on a Request for Secured Party Name Search Form.

Section 3.[Section 4. Search Methodology.] (1) Search results shall be produced by the application of search logic to the name provided by the requesting party [presented to the filing officer. Human judgment shall not play a role in determining the results of the search].

(2) [Standard search logic.] The requirements established in this subsection shall describe the filing office's standard search logic and shall apply to all searches [unless the search request specifies that a nonstandard search logic be used].

(a) There shall not be a limit to the number of matches that may be returned in response to the search criteria.

(b) A distinction shall not be made between upper and lower case letters.

(c) The character "&" (the ampersand) shall be deleted and replaced with the word "and" each place it appears in the name.

(d) Punctuation marks and accents shall be disregarded. For the purposes of this administrative regulation, punctuation and accents include all characters other than the numerals zero through nine (9) and the letters A through Z, in any case, of the English alphabet.

(e) The word "the" at the beginning of an organization debtor name shall be disregarded.

(f) All spaces shall be disregarded.

(g) For first personal name and additional names or initials of individual debtor names, initials shall be treated as the logical equivalent of all names that begin with those initials, and first personal name and no additional names or initials shall be equated with all additional names or initials. For example, a search request for "John A. Smith" shall cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with the initial "A" or any name beginning with "A" in the additional names or initials field. If the search request is for "John Smith" (first personal name and surnames with no designation in the additional names or initials field), the search shall retrieve all filings against individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with any name or initial or no name or initial in the additional names or initials field.

(h) If the name being searched is the surname of an individual debtor name without any first personal name or additional names or initials provided, the search shall retrieve from the UCC information management system all financing statements with individual debtor names that consist of only the surname.

(i) The following words, phrases, or abbreviations shall be disregarded from the end of an organization name to the beginning of that organization name until an unlisted word, phrase, or abbreviation appears [as noise words]:

1. "agency";
2. "association";
3. "assn";
4. "associates";
5. "assoc";
6. "assc";
7. "attorney at law";
8. "attorneys at law";
9.[8.] "bank";
10.[9.] "national bank";
11.[10.] "na";
12.[11.] "business trust";
13.[12.] "charter";
14.[13.] "chartered";
15.[14.] "company";
16.[15.] "co";
17.[16.] "cooperative";
18. "coop";
19. "corporation";
20.[17.] "corp";
21.[18.] "credit union";
22.[19.] "cu";
23.[20.] "federal credit union";
24.[21.] "fcu";
25.[22.] "federal savings bank";
26.[23.] "fsb";
27.[24.] "general partnership";
28.[25.] "gen part";
29.[26.] "gp";
30.[27.] "incorporated";
31.[28.] "inc";
32.[29.] "limited";
33.[30.] "ltd";
34.[31.] "ltee";
35.[32.] "limited liability company";
36.[33.] "lc";
37.[34.] "llc";
38.[35.] "limited liability limited partnership";
39.[36.] "lllp";
40.[37.] "limited liability partnership";
41.[38.] "llp";
42. "limited partnership";
43.[39.]" "lp";
44.[40.] "medical doctors professional association";
45.[41.] "mdpa";
46.[42.] "medical doctors professional corporation";
47.[43.] "mdpc";
48.[44.] "national association";
49.[45.] "partners";
50.[46.] "partnership";
51.[47.] "professional association";
52.[48.] "prof assn";
53.[49.] "pa";
54. "professional service corporation";
55. "professional service corp";
56. "prof service corporation";
57. "prof service corp";
58.[50.] "professional corporation";
59.[51.] "prof corp";
60.[52.] "pc";
61.[53.] "professional limited liability company";
62.[54.] "pllc";
63. "public benefit corporation";
64. "public benefit corp";
65. "pbc";
66. "public benefit";
67.[55.] "real estate investment trust";
68.[56.] "registered limited liability partnership";
69.[57.] "rllp";
70.[58.] "savings association";
71.[59.] "sa";
72.[60.] "sole proprietorship";

73.[~~61.~~] "sp";
74.[~~62.~~] "spa";
75.[~~63.kkk.~~] "trust";
76.[~~64.~~] "trustee"; and
77.[~~65.~~] "as trustee".

(j) After using the requirements outlined in paragraphs (a) through (i) of this subsection to modify the name being searched, the search shall retrieve from the UCC information management system all unlapsed records, or, if requested by the searcher, all active records, that pertain to financing statements with debtor names that, after being modified as provided in [~~Section 5 of~~] this administrative regulation, exactly match the modified name being searched.[

~~Section 5. Changes in Standard Search Logic. If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that will alter search results, the filing office shall provide public notice of the change.~~]

Section 4.[~~Section 6. Search Responses.~~] (1) A response[~~responses~~] to a search request shall include the following:

(a)[~~(1) Copies.~~] A list [~~Copies~~] of all UCC records retrieved by the search[~~, unless only limited copies are requested by the searcher. Copies shall reflect any redaction of personal identifying information required by law.~~

~~(2) Introductory information. A filing officer shall include the following information with a UCC search response:~~];

(b)[~~(a) Filing office identification.~~] Identification of the filing office responsible for the search response;

(c)[~~(b) Unique search report identification number. Unique number which identifies the search report;~~

~~(c) Report date and time. The date and time the report was generated~~;

~~(d) Through date and time.~~] The date and time at, or prior to, which a UCC record was filed with the filing office in order for it to be reflected on the search;

(d)[~~(e) Certification date. The certification date and time for which the search is effective;~~

~~(f) Scope of search;~~

~~(g) Search logic used;~~

~~(h) Search logic disclaimer language;~~

~~(i) Name provided.~~] The name searched[~~as provided by searcher~~];[

~~(j) Search string. Normalized name as provided by Section 4 of this administrative regulation~~;

~~(k) Lien type searched. UCC or other type of documents searched;~~] and

(e)[~~(l) Copies.~~] Digital images [~~Copies~~] of all UCC records retrieved[~~revealed~~] by the search in .pdf or .tiff format[~~and requested by the searcher~~]. Any images not available may be requested from the filing office[~~Copies of UCC records shall not be available for electronic search requests~~].

(2)[~~(3) Report.~~] In addition to the information provided under subsection (1) of this section, a response to a request for certified[~~The~~] search results[~~report~~] shall contain the following in a Standard Search Certificate and Report:

(a) [~~Identification. Identification of the filing office responsible for the search report;~~

~~(b) Search report identification number.~~] A certificate [~~Unique~~] number [~~assigned under subsection (2)(b) of this section~~]; [~~and~~]

(b) The date on which the search was certified by the filing office; and

(c) The scope of the search, indicating whether the requesting party has requested active records or only unlapsed records. [~~Identification of financing statement. Identification of each initial financing statement, including a listing of all related amendments, correction statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria, including whether the searcher has requested active records or only unlapsed records. Financing statement information shall include the following:~~

~~1. The initial financing statement file number;~~

~~2. The date and time the initial financing statement was filed;~~

~~3. The lapse date;~~

~~4. The debtor name that appears of record;~~

~~5. The debtor address that appears of record;~~

~~6. The secured party name that appears of record;~~

~~7. The secured party address that appears of record;~~

~~8. An indication of type of each amendment, if any;~~

~~9. The date and time each amendment, if any, was filed;~~

~~10. The amendment file number of each amendment, if any;~~

~~11. The date and time a correction statement, if any, was filed; and~~

~~12. The date and time a filing officer statement, if any, was filed.~~

(3) A response to a request for a secured party name search shall include only active records and shall not be certified.

Section 5. UCC records and data shall be provided to the public by the following methods:

(1) Copies of individually identified documents shall be provided in digital .pdf format at no charge unless paper copies are specifically requested. Paper copies shall be assessed at the rate of $0.50 cents per page. A request for paper copies shall include a mailing address where the requested copies shall be mailed. Copies may be certified for an additional fee of five dollars.

(2) Bulk data related to UCC filings may be obtained through subscription as directed by the website of the Office of the Secretary of State and shall be made available under the terms and conditions of the subscriber agreement.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: October 29, 2021 at 1:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 28, 2021, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 December 31, 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: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes filing office procedures related to UCC search requests, reports, and copies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing clarity and uniformity with regard to UCC search requests, reports, and copies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, and model UCC regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by establishing clearly defined procedures with regard to UCC search requests, reports, and copies.

(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 modifies existing language to harmonize regulatory language with filing office procedures, authorizing statutes, KRS Chapter 355, Article 9, and model UCC regulations. The amendment also establishes when a search may be certified and the cost, if any, for copies of individually identified documents.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect filing office practices, to accurately reflect UCC index search logic, to accurately reflect search report contents, to comply with KRS Chapter 13A, and to describe how copies may be provided and the corresponding costs, if any.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute by clarifying procedures related to UCC search requests, reports, and copies of individually identified UCC documents.

(d) How the amendment will assist in the effective administration of the statues: This amendment provides clarity and certainty with regard to UCC search requests, reports, and copies of individually identified UCC documents.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the Office of the Secretary of State and any individual, business, organization, or governmental entity that conducts a search of UCC records.

(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 Office of the Secretary of State already utilizes many of the procedures identified in this regulation. Users of services referenced will not have to take any additional action, but they may experience either a fee elimination or fee increase depending on whether they request electronic or paper copies of UCC documents. Individuals identified in question (3) may need to familiarize themselves with the contents of this regulation if they are conducting a UCC records search.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment eliminates two current fees for obtaining copies of a UCC record in an electronic format, i.e., a $.10 per page fee for regular copies and a $.050 per page fee for certified copies. The vast majority of current requestors are seeking regular or certified copies in an electronic format. These individuals or entities will see a fee decrease. Entities or individuals that request non-certified paper copies of individual UCC documents will see a fee increase from $.10 per page to $.050 per page.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation provides uniformity and certainty with regard to UCC search requests, reports, and obtaining copies of individually identified UCC documents. Electronic copies of individually identified documents will be made available at no cost to the requesting party.

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

(a) Initially: There will be minimal to no cost to implement this administrative regulation. The Office of Secretary of State currently utilizes these procedures or can implement them with minimal to no additional agency cost.

(b) On a continuing basis: There will be minimal to no costs to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation amendment eliminates two current fees for obtaining copies of a UCC record in an electronic format, i.e., a $.10 per page fee for regular copies and a $.050 per page fee for certified copies. The vast majority of current requests are seeking regular or certified copies in an electronic format. Entities or individuals that request non-certified paper copies of individual UCC documents will see a fee increase from $.10 per page to $.050 per page.

(9) TIERING: Is tiering applied? Tiering was not applied in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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 Office of the Secretary of State and units, parts, or divisions of state or local government that conducts a search of UCC records.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526.

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.

(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? There will be minimal to no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be minimal to no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency or to other state and local agencies.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
810 KAR 8:025E

This emergency regulatory amendment is promulgated to meet an imminent threat to public health, safety, or welfare, and to prevent a loss of state funds. On October 5, 2021, 810 KAR 8:025 became effective. Shortly thereafter, it was observed that this newly-promulgated regulation contained a typographical error, which provided self-contradictory thresholds for clenbuterol and procaine penicillin. This contradictory guidance regarding mandatory threshold limits provides confusing and erroneous information to trainers and veterinarians about the appropriate threshold for clenbuterol and procaine penicillin in Kentucky. This administrative regulation is filed on an emergency basis to ensure public health, safety, and welfare, as well as to ensure the continuation of horse racing at Kentucky tracks. This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this

emergency administrative regulation.

ANDY BESHEAR, Governor
RAY PERRY, Secretary

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Emergency Amendment)

810 KAR 8:025E. Drug, medication, and substance withdrawal guidelines.

EFFECTIVE: October 21, 2021
RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370
STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260, 230.320, 230.370
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the withdrawal guidelines for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian.

(1) This administrative regulation shall provide certain mandatory treatment requirements, guidance, and advice on medication withdrawal intervals.

(2)[~~(a)~~] These withdrawal guidelines regarding furosemide shall not apply to two (2) year-old or stakes horses pursuant to 810 KAR 8:010 Section 6.

(3)(a)[~~(b)~~] Unless otherwise specified in these withdrawal guidelines, KAR Title 810, or KRS Chapter 230, the following withdrawal guidelines in this section are voluntary and advisory. The guidelines are recommendations based on current scientific knowledge that may change over time.

(b)[~~(c)~~] A licensee may present evidence of full compliance with these guidelines to the commission and the stewards as a mitigating factor to be used in determining violations and penalties.

(c)[~~(d)~~] These withdrawal interval guidelines assume that administration of medications will be performed at doses that are not greater than the manufacturer's maximum recommended dosage, or the dosage recommended in this document. Medications administered at dosages above manufacturer's recommendations, in compounded formulations, or in combination with other medications or administration inside the withdrawal interval may result in test sample concentrations above threshold concentrations that could lead to positive test results and the imposition of penalties.

(d)[~~(e)~~] The time of administration of an orally administered substance, for the purposes of withdrawal interval, shall be considered to be the time of complete ingestion of the medication by the horse via eating or drinking.

(e)[~~(f)~~] For products containing multiple medications, the withdrawal time to be used should be no less than the longest identified for any of the individual constituent substances--even if that substance is not present in the highest concentration in the product.

(f)[~~(g)~~] Brand names of medications, where applicable, are listed in parentheses following the generic name of a drug.

(4)[~~(3)~~](a) Withdrawal Guidelines. Furosemide shall be administered pursuant to 810 KAR 8:010.

(b) The following substances may be administered or applied up to the scheduled paddock time of the race in which the horse is to compete:

1. Topical applications, such as liniments, leg paints, salves, and ointments, which may contain antibiotics or DMSO, but do not contain steroids, anesthetics, or any other prohibited substances.

2. The following substances may be administered up to twenty-four (24) hours prior to the scheduled post time of the race in which the horse is to compete as long as their use follows subsection (3)[~~(2)~~] of this section:

a. Antibiotics, except those containing prohibited drugs, such as Procaine;

b. Antiprotozoals, such as ponazuril (Marquis), toltrazuril (Baycox), sulfamethoxazole/pyrimethamine (Daraprim);

c. Antifungal agents, such as Griseofulvin and Ketoconazole;

d. Certain inhalation agents that do not exhibit bronchodilator properties, such as cromolyn sodium (Intal), and acetylcysteine (Mucomyst);

e. Cimetadine (Tagamet), orally at 20 mg/kg twice daily for 7 doses;

f. Electrolytes, Vitamins, and Minerals, via IV, IM or oral administration;

g. Any oral supplements or nutrients not containing drugs;

h. Hyaluronic Acid (Legend), via IV administration;

i. Misoprostol;

j. Non-Androgenic Reproductive Hormones, such as HCG, Regumate and GnRH, in fillies and mares only;

k. Omeprazole (Gastrogard), orally at 2.2 g once daily for 4 days;

l. Polysulfated glycosaminoglycan (Adequan), via IM administration;

m. Proprionibacterium acnes suspension (Eqstim), or comparable immunostimulants, excluding levamisole;

n. Ranitidine (Zantac), orally at 8 mg/kg twice daily for 7 doses; and

o. Sucralfate.

3. Non-steroidal anti-inflammatory drugs (NSAIDS):

a. Elected NSAID: Only one of the following three NSAIDS may be administered up to the manufacturer's maximum labeled dosage until forty-eight (48) hours prior to the scheduled post time of the race in which the horse is to compete, as long as their use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation and the requirements of 810 KAR 8:010.

(i) Phenylbutazone (Butazolidin) 4.4 mg/kg, via IV administration only;

(ii) Flunixin Meglumine (Banamine) 1.1 mg/kg, via IV administration only; and

(iii) Ketoprofen (Ketofen) 2.2 mg/kg, via IV administration only.

b. In accordance with the European Horserace Scientific Liaison Committee, the following withdrawal intervals shall be observed for all NSAIDS, except for those established in subparagraph 3.a. of this paragraph, for administration prior to the scheduled post time of the race in which the horse is to compete, as long as their use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation:

(i) Flunixin Meglumine (Banamine) 1.1 mg/kg, via IV administration: 6-day withdrawal interval;

(ii) Phenylbutazone (Butazolidin) 4.4 mg/kg, via IV administration: 7-day withdrawal interval;

(iii) Ketoprofen (Ketofen) 2.2 mg/kg, via IV administration: 4-day withdrawal interval;

(iv) Diclofenac Sodium Topical (Surpass Cream), via a single, 5-inch application: 7- day withdrawal interval; and

(v) Firocoxib (Equioxx) 0.1 mg/kg, via a single oral or IV dose, repeated daily administration: 15-day withdrawal interval from date of last administration.

(5)[~~c.~~] The following substances have a forty-eight (48) hour withdrawal guidance prior to the scheduled post time of the race in which the horse is to compete as long as their use follows Section 1(3)[~~Section 1(2)~~] of this administrative regulation:

(a)[~~(i)~~] Acepromazine (Promace), via IV administration at 0.05 mg/kg;

(b)[~~(ii)~~] Butorphanol (Torbugesic), via IV administration at 0.1 mg/kg;

(c)[~~(iii)~~] Cetirizine (Zyrtec), orally at 0.4 mg/kg twice daily for 5 doses; although it is recommended that ivermectin should not be administered within forty-eight (48) hours of a race if horse has

been administered cetirizine;

(d)[~~(iv)~~] Dantrolene (Dantrium), via oral administration at 500 mg total dose;

(e)[~~(v)~~] Detomidine (Dormosedan), via IV administration at 5 mg single dose;

(f)[~~(vi)~~] DMSO via IV, oral, or topical administration up to 60 ml

(g)[~~(vii)~~] Glycopyrrolate (Robinol), via IV administration at 1 mg total dose;

(h)[~~(viii)~~] Guaifenesin, orally at 2 g twice daily for 5 doses;

(i)[~~(ix)~~] Methocarbamol (Robaxin-V), via single IV at 15 mg/kg;

(j)[~~(x)~~] Procaine penicillin, via IM administration at 17 mg/kg; and

(k)[~~(xi)~~] Xylazine (Rompun), via IV administration at 200 mg single dose.

(6)[~~d.~~] The following substances shall not be administered within forty-eight (48) hours of a race:

(a)[~~(i)~~] Beta-2 agonists by inhalation, such as terbutaline, salmeterol, and fenoterol;

(b)[~~(ii)~~] Ergot alkaloids, such as Ergonovine and Methergine;

(c)[~~(iii)~~] Ipratopium;

(d)[~~(iv)~~] Isoxsuprine; and

(e)[~~(v)~~] Pentoxyphylline (Trental).

(7)[~~e.~~] The following substances may be administered up to seventy-two (72) hours prior to the scheduled post time of the race in which the horse is to compete as long as their use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation:

(a)[~~(i)~~] Albuterol (Proventil) via inhalation at 720 mcg;

(b)[~~(ii)~~] Dexamethasone (Azium), via oral, IV, IM administration at 0.05 mg/kg. However, if another corticosteroid was administered systemically or intra-articularly, this withdrawal guidance shall not apply and a minimum five (5) day withdrawal is recommended;

(c)[~~(iii)~~] Lidocaine, via subcutaneous administration at 200 mg total dose;

(d)[~~(iv)~~] Mepivacaine (Carbocaine), via subcutaneous administration at 0.07 mg/kg; and

(e)[~~(v)~~] Romifidine (Sedivet), via IV administration at 50 mg.

(8)[~~f.~~] The following substances may be administered up to ninety-six (96) hours prior to the scheduled post time of the race in which the horse is to compete as long as their use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation:

(a) [~~(i)~~] Hydroxyzine (Atarax); and

(b) [~~(ii)~~] Phenytoin (Dilantin).

(9)[~~g.~~] Reserpine (Serpasil) may be administered up to seven (7) days prior to the scheduled post time of the race in which the horse is to compete as long as its use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation.

(10)[~~h.~~] The use of an extra-corporeal shock wave therapy or radial pulse wave therapy machine may be performed until ten (10) days prior to the scheduled post time of the race in which the horse is to compete, as long as its use complies with 810 KAR 8:010.

(11)[~~i.~~] The following substance may be administered up to twenty-one (21) days prior to the scheduled post time of the race in which the horse is to compete, as long as its use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation, and its use complies with 810 KAR 8:010 Section 10: Clenbuterol (Ventipulmin), orally up to 0.8 mcg/kg twice daily

(12)[~~j.~~] Any horse that has been treated with therapeutic medications found in Section 1 of this administrative regulation may, at the trainer's request and expense, and on permission of a commission veterinarian, have samples of blood or urine collected by the commission veterinarian for analysis by the commission laboratory prior to entry to race in the state of Kentucky.

(a)[~~(i)~~] As a condition of this elective testing, the trainer shall be required to disclose the date and time, dose, and route of administration of the substance for which clearance testing is requested.

(b)[~~(ii)~~] A report from the commission laboratory of a negative finding in this pre-race, elective testing shall not provide a safe harbor for the owner, trainer, veterinarian, or horse. A report from the commission laboratory of a positive finding in a post-race sample shall be treated as a violation of KAR Title 810, even if there was a negative finding by the commission laboratory in the clearance testing sample.

(13)[~~k.~~] The following shall have a fourteen (14) day stand down period for intra-articular injection. Any IA corticosteroid injection within fourteen (14) days shall be a violation:

(a)[~~(i)~~] Betamethasone, via IA administration at 9 mg total dose in a single articular space. Withdrawal time should be increased for use of betamethasone products with a ratio of greater than 1:1 betamethasone acetate to betamethasone sodium phosphate. Intramuscular administration is associated with substantially longer withdrawal times.

(b)[~~(ii)~~] Isoflupredone (Predef 2x), via IA administration at 20 mg in a single joint space or 10 mg subcutaneous.

(c)[~~(iii)~~] Methyprednisolone (Depo-Medrol), via IA administration at a total dose of less than 100 mg in a single articular space**.** Intramuscular administration is associated with substantially longer withdrawal times and is not recommended, in accordance with the Racing Medication and Testing Consortium. Clearance testing is recommended in blood and urine prior to entry.

(d)[~~(iv)~~] Triamcinolone acetonide (Vetalog), via IA administration at 9 mg total dose in a single articular space. Intramuscular administration is associated with substantially longer withdrawal times.

(14)[~~l.~~] It is recommended that any horses receiving Fluphenazine (Prolixin) receive pre-race clearance testing.

(15)[~~(4)~~] Withdrawal Guidelines Chart:

Substance	Brand Name	Recommended Minimum Withdrawal	Administration Specifications
Acepromazine	PromAce	48 hours	0.05 mg/kg via IV administration
Acetylcysteine	Mucomyst	24 hours	Inhalation
Albuterol	Proventil	72 hours	720 mcg via inhalation
Beclomethasone	Beclovent	24 hours	Inhalation only
Butorphanol	Torbugesic	48 hours	0.1 mg/kg via IV administration
Cetirizine	Zyrtec	48 hours	0.4 mg/ml orally twice daily for 5 doses
Cimetadine	Tagamet	24 hours	20 mg/kg orally twice daily for 7 doses
Clenbuterol	Ventipulmin	21 days	0.8 mcg/kg orally Pursuant to 810 KAR 8:010 Section 10, clenbuterol shall be prohibited unless the prescription is made for a specific horse based on a specific diagnosis. The veterinarian shall provide a copy of the treatment sheet to the Equine Medical Director or designee for review within twenty-four (24) hours of administration. A horse administered clenbuterol shall be placed on the veterinarian's list for at least twenty-one (21) days after the last administration. The horse shall meet all conditions for removal from the list, including negative blood and urine sampling.
Cromolyn sodium	Intal	24 hours	Inhalation
Dantrolene	Dantrium	48 hours	500 mg orally
Detomidine	Dormosedan	48 hours	5 mg via IV administration
Dexamethasone	Azium	72 hours IV PO, with	IV, PO, IM, pursuant to the European Horserace Scientific Liaison

		no other corticosteroids administered. 5 days if other corticosteroids have been administered.	Committee.
DMSO		48 hours	Topical, IV, or oral administration up to 60 ml
Ergonovine		48 hours	No dose specified
Fenoterol		48 hours	Via inhalation, no dose specified
Furosemide 2-year-olds beginning in 2020 Stakes horses beginning in 2021	Salix	24 hours	Administration shall be prohibited at less than 24 hours, and limited to a maximum 500 mg single dose via IV administration
Furosemide	Salix	4 hours	150-500 mg single IV dose administered by KHRC veterinarian. See 810 KAR 8:010 Section 6.
Guaifenesin		48 hours	2 g orally twice daily for 5 doses
Glycopyrrolate	Robinol	48 hours	1 mg
Griseofulvin	Fulvacin	24 hours	No dose specified
Hyaluronic Acid	Legend	24 hours	IV administration only; no dose specified
Hydroxyzine	Atarax	96 hours	No dose specified
Ipratropium		48 hours	Via inhalation, no dose specified
Isoxsuprine	Vasodilan	48 hours	No dose specified
Ketoconazole	Nizoral	24 hours	No dose specified
Lidocaine		72 hours	200 mg total dose SQ
Mepivacaine	Carbocaine	72 hours	0.07 mg/kg SQ
Methocarbamol	Robaxin	48 hours	15 mg/kg single IV
Methylergonovine	Methergine	48 hours	No dose specified
Misoprostol	Cytotec	24 hours	No dose specified
Omeprazole	Gastrogard	24 hours	2.2 g orally once daily for 4 days
Omeprazole	Gastrogard	24 hours	2.2 g orally once daily for 4 days
Pentoxyfylline	Trental	48 hours	No dose specified
Phenytoin	Dilantin	96 hours	No dose specified
Ponazuril/Diclazuril/ Sulfadiazine-Pyrimethamine	Marquis/Protazil	24 hours	Oral
Procaine Penicillin		48 hours	17 mg/kg IM Procaine penicillin treatments shall be reported to the stewards no later than twenty-four (24) hours after the last injection is administered. Horses so treated may be required to be under commission-approved, continuous surveillance for the six-hour interval prior to the post time for the race in which the horse is entered. The owner of the horse shall be responsible for all costs associated with the surveillance. Prospective surveillance arrangements shall be submitted to the stewards no later than close of business on the day of entry.
PSGAG	Adequan	24 hours	Via IM administration
Ranitidine	Zantac	24 hours	8 mg/kg orally twice daily for 7 doses
Reserpine	Serpasil	7 days	No dose specified
Romifidine	Sedivet	72 hours	50 mg via IV administration
Salmeterol		48 hours	Via inhalation, no dose specified
Sucralfate	Carafate	24 hours	No dose specified
Terbutaline		48 hours	No dose specified
Xylazine	Rompun	48 hours	200 mg via IV administration

(16) [~~(5)~~] NSAID withdrawal guidelines chart:

Substance	Brand Name	Recommended Minimum Withdrawal	Administration Specifications
Phenylbutazone	Butazolidin	48 hours—single elected NSAID. If this is not the single elected NSAID, then 7 days, pursuant to the European Horserace Scientific Liaison Committee.	4.4 mg/kg via IV administration
Flunixin	Banamine	48 hours—single elected NSAID. If this is not the single elected NSAID, then 6 days, pursuant to the European Horserace Scientific Liaison Committee.	1.1 mg/kg via IV administration
Ketoprofen	Ketofen	48 hours—single elected NSAID, If this is not the single elected NSAID, then 4 days, pursuant to the European Horserace Scientific Liaison Committee.	2.2 mg/kg via IV administration
Diclofenac	Surpass	7 days, pursuant to the European Horserace Scientific Liaison Committee.	5 inch ribbon of Surpass every 12 hours to one site
Firocoxib	Equioxx	15 days, pursuant to the European Horserace Scientific Liaison Committee.	0.1 mg/kg once daily for 4 days

(17)[~~(6)~~] Miscellaneous withdrawal guidelines chart:

Substance	Brand Name	Recommended Minimum Withdrawal	Administration Specifications
Anthemintics (except thiazide products		72 hours	
Non-androgenic reproductive hormones	Including HCG, Regumate, GnRH, in fillies and mares only	24 hours	
Proprionibacterium acnes suspension or comparable immunostimulants		24 hours	
Electrolytes, vitamins, minerals		24 hours	Via IV or IM administration
Antibiotics		24 hours	
Any injectable other than furosemide		24 hours	810 KAR 8:010 specifically prohibits any injections at less than 24 hours to post time for any substance.
Intra-articular injections, other than corticosteroids		72 hours	

Section 2. (1)[~~(7)~~] Available Threshold Levels Associated to KHRC Withdrawal Guidelines:

Substance	Threshold
Acepromazine	10 nanograms per ml in urine of hydroxyethylpromazine sulfoxide (HEPS)
Albuterol	1 nanogram per ml in urine
Boldenone Male horses other than Geldings	15 nanograms per ml in urine of boldenone, free and conjugated OR 25 picograms per ml in serum or plasma of boldenone, free
Boldenone Geldings and female Horses	1 nanogram per mil in urine of boldenone, free and conjugated
Butorphanol	2 nanograms per ml in serum or plasma of butorphanol, free OR 300 nanograms per ml in urine of total butorphanol
Cetirizine	6 nanograms per ml in serum or plasma
Cimetadine	400 nanograms per ml in serum or plasma
Clenbuterol	[~~140 picograms per ml of urine~~ ~~OR~~] Limit of detection in both urine and blood
Dantrolene	0.1 nanograms per ml of serum or plasma of 5-OH dantrolene
Detomidine	2 nanogram per ml in urine of carboxydetomidine OR 1 nanogram per ml of detomidine in serum or plasma
Diclofenac	5 nanograms per ml in serum or plasma
DMSO	10 micrograms per ml in serum or plasma
Firocoxib	20 nanograms per ml in serum or plasma
Flunixin	5 nanograms per ml in serum or plasma
Furosemide	For horses eligible to race on furosemide, 100 nanograms per ml in serum or plasma AND Urine specific gravity of less than 1.010 OR 1 nanogram per ml in serum or plasma for 2-year-olds beginning in 2020 or stakes horses beginning in 2021, see 810 KAR 8:010
Glycopyrrolate	3 picograms per ml in serum or plasma
Guaifenesin	12 nanograms per ml in serum or plasma
Ketoprofen	2 nanograms per ml of serum or plasma
Lidocaine	20 picograms per ml in serum or plasma of Total 3-OH-lidocaine
Mepivacaine	10 nanograms per ml in urine of OH-mepivicaine OR Limit of detection in serum or plasma
Methocarbamol	1 nanogram per ml in serum or plasma
Methylprednisolone	100 picograms per ml in serum or plasma
Nandrolone Male horses other than geldings	45 nanograms per ml in urine of 5α-estrane-3β, 17α-diol OR In urine a ratio of 5α estrane-3β, 17 α-diol to 5α estrene-3β, 17 α-diol of > 1:1
Nandrolone Geldings and female horses	1 nanogram per ml in urine of nandrolone, free and conjugated OR 50 picograms per ml of procaine in blood, serum, or plasma of nandrolone, free
Omeprazole	10 nanograms per ml omeprazole sulfide in serum or plasma
Phenylbutazone	0.3 micrograms per ml in serum or plasma
Prednisolone	10 nanograms per ml free Prednisolone in urine
Procaine Penicillin Horses reported to have been treated with procaine penicillin	25 nanograms per ml of procaine in serum or plasma Procaine penicillin treatments shall be reported to the stewards no later than 24 hours after the last injection is administered. Horses so treated may be required to be under KHRC approved, continuous surveillance for the six hour interval prior to the post time for the race in which the horse is entered. The owner of the horse shall be responsible for all costs associated with the

	surveillance. Prospective surveillance arrangements shall be submitted to the stewards no later than close of business on the day of entry.
Procaine Penicillin Horses not reported to have been treated with procaine penicillin	Limit of detection for procaine in serum or plasma [~~2 nanograms per ml of serum or plasma.~~] Procaine penicillin treatments shall be reported to the stewards no later than 24 hours after the last injection is administered. Horses so treated may be required to be under KHRC approved, continuous surveillance for the six hour interval prior to the post time for the race in which the horse is entered. The owner of the horse shall be responsible for all costs associated with the surveillance. Prospective surveillance arrangements shall be submitted to the stewards no later than close of business on the day of entry.
Ranitidine	40 nanograms per ml in serum or plasma
Testosterone Geldings	20 nanograms per ml in urine of testosterone, free and conjugated OR 25 picograms per ml in serum or plasma of testosterone, free
Testosterone Female horses (unless in foal)	55 nanograms per ml in urine of testosterone, free and conjugated OR 100 picograms per ml in serum or plasma of testosterone, free
Xylazine	200 picograms per ml in serum or plasma

(2)[~~(8)~~] All other NSAIDs not listed on the withdrawal guidelines shall have a threshold set at limit of detection in serum or plasma.

JONATHAN RABINOWITZ, Chair
RAY PERRY, Secretary

APPROVED BY AGENCY: October 19, 2021

FILED WITH LRC: October 21, 2021 at 11:54 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 22, 2021 at 9:00 a.m. EST at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511 via Zoom. 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 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 11:59 p.m. EST on December 31, 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 below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets recommended medication withdrawal guidelines and also sets mandatory medication threshold levels associated with those withdrawal guidelines.

(b) The necessity of this administrative regulation: This regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications before and during race meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants to horses prior to the horse participating in a race. This administrative regulation establishes the withdrawal guidelines and maximum thresholds for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on and before racing dates, and in a manner that is consistent with the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: This amendment will correct a typographical error, in order to clearly state the mandatory threshold levels for clenbuterol and procaine penicillin. Additionally, this amendment will correct numbering errors, which were discovered after filing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to effectuate the intent of the Commission and to ensure integrity, health, and safety in racing.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes maximum threshold for clenbuterol and procaine penicillin.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation ensures that clenbuterol and procaine penicillin are used appropriately on and before racing dates, and in a manner that is consistent with the integrity of racing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred and standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Participants in horse racing, and especially owners, trainers, and veterinarians, will be required to adhere to the requirements and rules set forth in the Withdrawal Guidelines and Available Threshold Levels, which pertain to the use of medications in horse racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No new costs are anticipated to comply with this administrative regulation, as Kentucky's licensees have operated in accordance with similar requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost 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: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.300

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for the subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: NA

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

During the 2021 Regular Session, Senate Bill 2 amended portions of KRS Chapter 13A. An emergency regulation may now be amended after its original filing, either after receiving comments during the public comment period or, with agreement of both the committee and the agency, during a legislative committee meeting. Emergency Amended After Comments regulations go into effect upon filing and regulations amended during a legislative committee meeting go into effect upon adjournment of the meeting.

NONE

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

DEPARTMENT OF LAW
Department of Criminal Litigation
(As Amended at ARRS, November 9, 2021)

40 KAR 6:010. Kentucky Victim and Witness Protection Program.

RELATES TO: KRS 15.247[~~1998 Ky. Acts ch. 606, sec. 50, ch. 616, Part 1, Operating Budget, A. Government Operations, 5. Attorney General~~]

STATUTORY AUTHORITY: KRS 15.247[~~1998 Ky. Acts ch. 606, sec. 50(1), (2), (6)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.247 ***requires*** [~~1998 Ky. Acts ch. 606, sec. 50~~] ***[provides that]*** the Attorney General ***to promulgate administrative regulations establishing requirements for [shall develop and administer]*** a program for the protection of crime victims and witnesses and their immediate families. This administrative regulation establishes the Victim and Witness Protection Program.

Section 1. Definitions. (1) "Council" means the Prosecutors Advisory Council established by KRS 15.705.

(2) "Law enforcement agency" means a lawfully organized police unit or police force of county, city, or metropolitan government, employing law enforcement officers as that term is defined in KRS 15.310.[

~~(a) The Kentucky State Police;~~

~~(b) A sheriff's office;~~

~~(c) A county police department; or~~

~~(d) A city police department.~~]

(3) "Program" means the Kentucky Victim and Witness Protection Program.

(4) "Prosecutor" means a:

(a) Commonwealth's attorney or his or her authorized assistant; or

(b) County attorney or his or her authorized assistant.

(5) "Protective services" is defined by KRS 15.247 [~~1998 Ky. Acts ch. 606, sec. 50~~].

(6) "Victim or witness at risk of harm" means a person who is:

(a)1. A crime victim as defined in KRS 421.500(1); ***[or]***

2. A crime witness expected to testify before a grand jury, at a trial, or other judicial proceeding; or

3. A member of the immediate family of a crime victim or crime witness; ***[and***]

(b) Cooperating with the law enforcement agency providing the protective services and performing the investigation, and the prosecutor of a criminal case; ***[and]***

(c) At substantial risk of imminent serious physical injury; and

(d) Unable to provide protective services to himself.

Section 2. Eligible Costs. (1) Excluding distributions of advances pursuant to Section 5 of this administrative regulation, program funding shall be limited to the reimbursement of the costs of protective services provided to a victim or witness at risk of harm.

(2) Reimbursement shall be limited to the costs of protective services provided by a law enforcement agency to a victim or witness at risk of harm for a maximum of 180 days in each criminal case. Each day during which protective services are provided shall count as one (1) day.

(3) Reimbursement shall be limited to the costs for protective services that:

(a) Were paid by the law enforcement agency with the funds of:

1. The law enforcement agency; ***[or]***

2. A fiscal court; ***[or]***

3. A city government; or

4. Other fund sources available to the law enforcement agency; ***[and]***

(b) Meet the requirements established by the provisions of this administrative regulation; and

(c) Are not funded by appropriations or other funds allocated to the law enforcement agency that provided the protective services.

(4) Reimbursement shall be limited to the costs of protective services that were necessary and reasonable for the protection of a victim or witness at risk of harm.

(5) The following costs of protective services shall be deemed reasonable:

(a) The regular hourly wage and benefit rate, or the regular overtime hourly wage and benefit rate ***if[when]*** applicable, of the employee of a law enforcement agency that provided protective services to a victim or witness at risk of harm.

(b) Cost of lodging that:

1. Is the most economical lodging, at government rates if available; and

2. Has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.

(c) Cost of meals shall be reimbursed at the rates provided in 200 KAR 2:006.[~~Meals, as follows:~~

~~1. Areas designated as nonhigh rate areas by the Secretary of the Finance and Administration Cabinet in 200 KAR 2:006: a maximum of six (6) dollars, per person, for breakfast; seven (7) dollars, per person, for lunch; and fourteen (14) dollars, per person, for supper; and~~

~~2. Areas designated as high rate areas by the Secretary of the Finance and Administration Cabinet in 200 KAR 2:006: a maximum of seven (7) dollars, per person, for breakfast; eight (8) dollars, per person, for lunch; and eighteen (18) dollars, per person, for supper.~~]

(d) Cost of the most economical personal hygiene products.

(e) Cost of emergency long distance phone calls to family members or employers.

(f) Cost of clothing items that have been determined by the law enforcement agency to be required for the protection of the victim or witness at risk of harm.

(g) Cost of child care, at the most economical rate, that has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm. (h) Cost of the temporary emergency use of a cellular phone.

(i) Actual mileage at the rate designated on the Office of the Controller's Web site listed in Section 1(6) in 200 KAR 2:006 [~~at twenty seven (27) cents per mile~~].

(j) Cost of a rental vehicle at the most economical rate available.

(k) Cost of cab, bus, train, or air fare at the most economical rate available that has been determined by the law enforcement agency to be appropriate transportation for the protection of the victim or witness at risk of harm.

(l) Cost of temporary storage of a vehicle at the most economical rate available that has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.

(m) Cost of the installation, rekeying, repair, or replacement of locks at a locksmith's regular rate for government work.

(n) Cost of the installation of a temporary alarm at an installer's regular rate for government work.

(6) The Attorney General shall approve the reimbursement of the costs of protective services that are not specified in subsection (5) of this section, if he has determined that under the circumstances the costs were necessary and reasonable for the protection of a victim or witness at risk of harm.

(7) Reimbursement shall be limited to the most economical costs, at government rates if applicable, of protective services that

met the needs of the protective services.

(8) Reimbursement of the cost of protective equipment shall be limited to the portion of its value allocated to use in the protective services, if the equipment is retained by the victim or witness at risk of harm.

(9) A law enforcement agency providing protective services shall utilize an available existing government service, if it determines that the service is appropriate for the protection of the victim or witness at risk of harm.

(10) A law enforcement agency shall comply with applicable state or local procurement requirements.

Section 3. Law Enforcement Agency's Application for Reimbursement. (1) A law enforcement agency seeking reimbursement of the costs of protective services provided to a victim or witness at risk of harm shall submit an application for reimbursement to a prosecutor who has jurisdiction over the crime.

(2) An application for reimbursement shall be made on the "Kentucky Victim and Witness Protection Program Application for Reimbursement" form. [

~~(3) An application for reimbursement shall include:~~

~~(a) The name of the law enforcement agency.~~

~~(b) The criminal case name and number or defendant's name, if known.~~

~~(c) The name of the person receiving the protective services.~~

~~(d) A signed statement by a law enforcement officer that the person receiving the protective services is a victim or witness at risk of harm.~~

~~(e) A complete description of the protective services provided, including:~~

~~1. The type of protective services provided;~~

~~2. The name of person who received the services;~~

~~3. The dates the services were provided;~~

~~4. The cost of the protective services;~~

~~5. A statement whether the law enforcement agency expects to submit additional applications for reimbursement for the criminal case; and~~

~~6. A statement whether the costs of protective services were paid with an advance of program funds specified in Section 5 of this administrative regulation.~~

~~(f) Excluding the receipts for meals to be reimbursed pursuant to Section 2(5)(c) of this administrative regulation, the receipts for the protective services provided.~~

~~(g) A statement signed by the head of the law enforcement agency or his authorized agent that the:~~

~~1. Law enforcement agency requests reimbursement of the costs of the protective services provided;~~

~~2. Costs of the protective services meet the requirements established by the provisions of this administrative regulation; and~~

~~3. Costs of the protective services are not funded by appropriations or other funds allocated to the law enforcement agency.~~

~~(4) The completed application for reimbursement shall be submitted by the law enforcement agency to a prosecutor who has jurisdiction over the crime.~~]

Section 4. Prosecutor's Application for Reimbursement. (1) A prosecutor shall review an application for reimbursement submitted by a law enforcement agency and determine whether he will submit the application to the Attorney General.

(2) If the prosecutor determines to submit the application for reimbursement to the Attorney General, he shall sign a statement that he recommends reimbursement of all or part of the costs of the protective services.

(3) An application for reimbursement submitted from a prosecutor to the Attorney General shall be transmitted by the Attorney General to the council for review and recommendations.

(4) The council shall review and consider an application for reimbursement at a regular meeting, or at a special meeting called for the purpose of reviewing applications for reimbursement.

(5) The council shall consider applications in the order received.

(6) The council shall recommend that:

(a) All or part of an application for reimbursement be approved; or

(b) An application for reimbursement be denied.

(7) The council shall base its recommendation on the requirements established by the provisions of this administrative regulation.

(8) The council shall submit its recommendation to the Attorney General.

(9) The Attorney General shall review the recommendation of the council and determine whether to:

(a) Approve all or part of an application for reimbursement; or

(b) Deny an application for reimbursement.

(10) If the Attorney General approves all or part of an application for reimbursement, the law enforcement agency that provided the protective services shall be reimbursed from program funds in the amount approved by the Attorney General.

(11) An application for reimbursement of the costs of protective services may be submitted at any time, after the protective services were provided, during the state fiscal year in which the services were provided.

Section 5. Application for Advance of Funds. (1) A law enforcement agency requesting an advance of program funds shall submit an application for an advance of program funds to a prosecutor who has jurisdiction over the crime.

(2) An advance of program funds shall be limited to a maximum of $500 for each application for an advance of program funds.

(3) An advance of program funds shall be limited to the payment of the costs of protective services that:

(a) Have been provided by the law enforcement agency to a victim or witness at risk of harm; and

(b) Cannot be paid with other funds available to the law enforcement agency.

(4) An application for an advance of Program funds shall be made on a "Kentucky Victim and Witness Protection Program Application for Advance of Program Funds" form.

(5) [~~An application shall include a statement signed by the head of the law enforcement agency or his authorized agent that:~~

~~(a) It has incurred or will incur costs of protective services that must be paid before the law enforcement agency can arrange for payment of the costs;~~

~~(b) It requests an advance of program funds;~~

~~(c) It intends to submit an application for reimbursement of the costs of the protective services pursuant to Section 3 of this administrative regulation;~~

~~(d) It will use the advance of program funds for the provision of protective services pursuant to the provisions of this administrative regulation; and~~

~~(e) The costs of the protective services for which the advance is requested cannot be paid with other funds available to the law enforcement agency.~~

~~(6) The application shall be submitted by the law enforcement agency to a prosecutor who has jurisdiction over the crime.~~

~~(7)~~] The prosecutor shall review an application for an advance of program funds submitted by a law enforcement agency and determine whether he will submit the application to the Attorney General.

(6)[~~(8)~~] If the prosecutor determines to submit the application for an advance of program funds to the Attorney General, he shall:

(a) Sign a statement that he recommends all or part of the advance; and

(b) Submit the application for an advance of program funds to the Attorney General.

(7)[~~(9)~~] The Attorney General shall distribute an advance of program funds to a law enforcement agency if he determines that an application complies with the provisions of this section.[

~~(10) The distribution of an advance of program funds shall be made during the Office of the Attorney General's regular business hours, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays.~~

(8)[~~(11)~~] The advance of program funds shall be limited to the amount recommended by the prosecutor.

(9) [~~(12)~~] The advance of program funds shall be made payable to the:

(a) Law enforcement agency;

(b) Head of the law enforcement agency; or

(c) Authorized agent of the head of the law enforcement agency.

(10) [~~(13)~~] The law enforcement agency shall report an expenditure of an advance of program funds on its application for reimbursement specified in Section 3 of this administrative regulation.

(11) [~~(14)~~] The law enforcement agency shall:

(a) Report an unexpended advance of program funds on its application for reimbursement to the prosecutor; and

(b) Return the unexpended advance of program funds with its application for reimbursement to the prosecutor.

(12)[~~(15)~~] The law enforcement agency shall repay the Attorney General the amount of an advance of program funds that it has expended, if the application for reimbursement of the costs of protective services for which the advance was made is denied.

(13)[~~(16)~~] A law enforcement agency shall not submit an application for an advance of program funds for the costs of protective services for a victim or witness at risk of harm if it has:

(a) Submitted an application for an advance of program funds for the costs of protective services for that victim or witness at risk of harm;

(b) Received an advance of Program funds; and

(c) Not submitted an application for reimbursement of the costs of the protective services provided with the advance of the program funds.

Section 6. Notice of Estimated Costs. (1) If a law enforcement agency begins providing protective services for which it intends to submit an application for reimbursement to a prosecutor, it shall notify the prosecutor and Attorney General, within three (3) business days, on a "Kentucky Victim and Witness Protection Program Notice of Estimated Costs" form, of the estimated costs and time period of the protective services it expects to include on the application.

(2) If a law enforcement agency determines that the cost of the protective services it expects to include on an application for reimbursement will be greater than the estimated costs previously reported, it shall immediately submit an updated notice of estimated costs to the prosecutor and Attorney General.

(3) If the Attorney General determines that the total of the estimated costs received by the Attorney General pursuant to subsection (1) of this section exceeds the available program funding, he shall notify the law enforcement agencies that have submitted a notice of estimated costs, and law enforcement agencies that submit a notice of estimated costs thereafter, that program funding may become obligated before the review of all law enforcement agency applications for reimbursement are completed.[

~~(4) If the Attorney General determines that all program funding has been obligated for the remainder of a fiscal year, he shall notify all prosecutors and law enforcement agencies that:~~

~~(a) Funding has been obligated; and~~

~~(b) If additional funding for the program becomes available, applicants:~~

~~1. Will be notified; and~~

~~2. May resubmit applications for funding.~~]

Section 7. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Victim and Witness Protection Program Application for Reimbursement OAG Form VWPP-03 [~~VWPP01~~] (08/21 [~~10/98~~])";

(b) "Kentucky Victim and Witness Protection Program Notice of Estimated Costs OAG Form VWPP-02 (08/21 [~~10/98~~])"; and

(c) "Kentucky Victim and Witness Protection Program Application for Advance of Program Funds OAG Form VWPP-03 (08/21 [~~10/98~~])".

(2) This material may be inspected, copied, or obtained***, subject to applicable copyright law,*** at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.***, or at ag.ky.gov.***

CONTACT PERSON: Theresa Gargan, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601; phone 502-696-5436; fax 502-573-1009; email Theresa.gargan@ky.gov.

DEPARTMENT OF LAW
Department of Criminal Litigation
Office of Trafficking and Abuse Prevention and Prosecution
(As Amended at ARRS, November 9, 2021)

40 KAR 6:020. Funding assistance from the child victims' trust fund [~~for child sexual abuse medical examinations~~].

RELATES TO: KRS 15.900, 15.920, 15.935[~~(1)(b)~~], 41.400

STATUTORY AUTHORITY: KRS 15.180, 15.935

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 15.180 authorizes the Attorney General to promulgate administrative regulations to facilitate performing the duties and exercise the authority vested in the Attorney General and the Department of Law.*** KRS 15.935(1) authorizes the Child Sexual Abuse and Exploitation Prevention Board to disburse available money from the child victims' trust fund, upon legislative appropriations, for the purposes, listed in the order of preference, stated in KRS 15.935(1)(a) through (g). This administrative regulation establishes standards and criteria governing the Board's disbursement of money from the fund[~~KRS 15.935(1)(b) authorizes the Child Sexual Abuse and Exploitation Prevention Board to fund, from the Child Victims' Trust Fund created pursuant to KRS 41.400, the cost of child sexual abuse medical examinations to the extent the fee for an examination is a service not eligible to be paid for by Medicaid or private insurance. The function of this administrative regulation is to establish standards and criteria governing the allocation of funding assistance for the case management aspects of child sexual abuse medical examinations in accordance with KRS 15.935~~].

Section 1. Definitions. (1) ***"Board" means the "state board" as defined by KRS 15.900(4).***

(2) [~~"Applicant" means an eligible provider applying for child sexual abuse medical examination funding assistance.~~

~~(2) "Case management" means the administrative aspects of the child sexual abuse medical examination and includes the following:~~

~~(a) Transcription of records;~~

~~(b) Scheduling appointments;~~

~~(c) Coordination of services;~~

~~(d) Making referrals for services; and~~

~~(e) Consultation with multidisciplinary teams, court personnel, officers of the court, parents or guardians, social workers, law enforcement and any other party involved in the treatment or protection of the child.~~

~~(3)~~] "Child" is defined by KRS 15.900(1).

(3)[(2)][~~(4)~~] "Child sexual abuse medical examination" means a complete physical examination of a child with a special focus on the anal or genital area or oral cavity, and the case management associated with the physical examination.

(4)[(3)][~~(5)~~] "Eligible provider" means a private, nonprofit agency, designated as a Children's Advocacy Center by the Cabinet for Health and Family Services under KRS 620.045, whose primary purpose is to provide, either directly or through contract, prevention, intervention, and treatment services to sexually abused children and their families, employing a child-focused multidisciplinary team approach.

(5)[(4)] "Office" is the Office of Trafficking and Abuse Prevention and Prosecution.**[**

(5) "[~~State board~~]***Board" is defined by KRS 15.900(4).]***

Section 2. Funding Criteria. (1) ***The board may disperse [~~Disbursement of~~]*** available money from the child victims' trust

fund***, in accordance with [shall be at the discretion of the Board for the purposes of and subject to the order of preference for expenditure stated in]*** KRS 15.935.

(2) The Board ***may, in accordance with KRS 15.935(1),[shall only]*** disburse available money from the child victims' trust fund to applicants that***:***

(a) Are private nonprofits or public organizations***;*** and

(b) [that] Have completed the application that is incorporated by reference in this administrative regulation.

(3) An applicant:

(a) Shall complete and submit the appropriate application that is incorporated by reference in this administrative regulation no later than February 28 preceding the beginning of the fiscal year in which disbursement of available money is sought. The Board may grant an extension of time for good cause shown. Applications shall be submitted by:

1. Mail to 1024 Capital Center Drive, Frankfort, Kentucky 40601; or

2. Email to ICareAboutKids@ky.gov.

(b) Seeking funding to:

1. Develop or operate a prevention program under KRS 15.935(1)(a) shall demonstrate ability to comply with the requirements of KRS 15.935(1)(a)1., 2., and 3.;

2. Develop or operate a statewide public education and awareness campaign on child sexual abuse under KRS 15.935(1)(e) shall demonstrate ability to comply with the requirements of KRS 15.935(1)(a) 2. and 3.; ***or***

3. Fund, under KRS 15.935(1)(b), the cost of medical examinations of victims of suspected child sexual abuse to the extent the fee for an examination is a service not eligible to be paid for by Medicaid or private insurance shall also comply with Section 3 of this administrative regulation.

(c) Shall demonstrate need for financial assistance***.[;]***

(d) To whom funds are disbursed, ***shall agree[agrees]*** to:

1. Provide program models and consultation to organizations and communities regarding program development and maintenance; ***and***

2. Execute a memorandum of agreement with the office.

(4) Disbursement of money from the child victims' trust fund shall occur during the state fiscal year following the approval of funding by the board.

Section 3. Disbursement of money for child sexual abuse medical examinations. (1) Disbursement of money from the child victims' trust fund for child sexual abuse medical examinations shall be on a reimbursement basis.

(2) Reimbursement for child sexual abuse medical examinations shall not exceed $150 per case.

(3) An applicant for child sexual abuse medical examination funding shall certify that:

(a) Funds granted will:

1. Be used solely for the purpose of reimbursing the cost of child sexual abuse medical examinations on a per-exam basis;

2. Supplement and not replace existing funds received by the applicant from other sources for child sexual abuse medical examinations;

3. Not be used to reimburse services to the extent those services are covered by private health insurance or Medicaid, or if a third party has a legal obligation to pay; ***[and]***

(b) Every person performing a child sexual abuse medical examination service will comply with applicable state and federal licensing or certification requirements;

(c) The Applicant has ability to provide access to child sexual abuse medical examinations in the geographic region served by the applicant; and

(d) The applicant is an eligible provider as defined in Section 1 of this administrative regulation.[~~Child Sexual Abuse Medical Examination Funding Assistance. (1) An eligible provider may apply annually for funding assistance from the Child Victims' Trust Fund Funding shall be used to pay for the case-management aspects of a child sexual abuse medical examination. The term of the financial assistance shall be the state fiscal year.~~

~~(2) Application for child sexual abuse medical examination funding assistance shall be made by submission of a completed:~~

~~(a) "Application for Child Sexual Abuse Medical Examination Funding Assistance" form; or~~

~~(b) Electronic application, if the applicant has that capability.~~

~~Section 3. Funding Requirements. (1) The total funds awarded annually by the state board to each applicant shall be limited by:~~

~~(a) Availability of funds; and~~

~~(b) Board approval.~~

~~(2) Reimbursement for the case management aspects of an examination shall not exceed $150 per case.~~

~~(3) An applicant shall provide assurances to the state board that:~~

~~(a) Funds granted will:~~

~~1. Be used solely for the purpose of reimbursing the case management aspects of child sexual abuse medical examinations;~~

~~2. Supplement and not replace existing funds received by the applicant from other sources for child sexual abuse medical examinations; and~~

~~3. Not be used to reimburse services for which there is private health insurance coverage, or if a third party has a legal obligation to pay; and~~

~~(b) Every person performing a child sexual abuse medical examination service will comply with applicable state and federal licensing or certification requirements.~~

~~Section 4. Funding Criteria. Allocation of funding assistance for child sexual abuse medical examinations shall be based on funds available in the Child Victims' Trust Fund and whether the applicant:~~

~~(1) Is currently providing, or plans to provide, child sexual abuse medical examinations:~~

~~(a) Directly; or~~

~~(b) By contract with medical providers;~~

~~(2) Demonstrates a need for financial assistance to be used to provide medical examinations in the geographic area served by the applicant; and~~

~~(3) Has demonstrated the ability to provide access to child sexual abuse medical examinations in the geographic region served by the applicant.~~

~~Section 5. Reporting Requirements. Within ninety (90) days from the end of the state fiscal year, an applicant receiving financial assistance under this administrative regulation shall submit a final report to the state board containing the following information:~~

~~(1) The applicant's total child sexual abuse medical examination budget for the period funded, including:~~

~~(a) The amount and sources of revenue for the examinations; and~~

~~(b) The total amount expended on the examinations; and~~

~~(2) The number of child sexual abuse medical examinations conducted for the period funded.~~

~~Section 6. Appeals. An applicant denied available funding under this administrative regulation shall have a right to appeal pursuant to KRS Chapter 13B.~~]

Section 4.[~~Section 7.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "[~~Application for~~] Child Sexual Abuse Medical Examination Funding Application [~~Assistance~~], August 2021[~~December 2000~~]"[~~, is incorporated by reference.~~]; and

(b) "Child Victims' Trust Fund Prevention and Public Education and Awareness Program Funding Application, August 2021".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Trafficking and Abuse Prevention and Prosecution[~~Victims Advocacy Division~~], Office of Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material incorporated by reference is also available at icareaboutkids.ky.gov.

CONTACT PERSON: Theresa Gargan, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601; phone 502-696-5436; fax 502-573-1009; email Theresa.gargan@ky.gov.

DEPARTMENT OF LAW
Department of Criminal Litigation
Office of Trafficking and Abuse Prevention and Prosecution
(As Amended at ARRS, November 9, 2021)

40 KAR 6:030. Human Trafficking Victims Fund.

RELATES TO: KRS 529.010, 529.130, 529.140, 529.150
STATUTORY AUTHORITY: KRS 529.140
NECESSITY, FUNCTION, AND CONFORMITY: KRS 529.140 creates the "human trafficking victims fund" as a separate revolving fund within the Office of the Attorney General. Moneys in the fund must be distributed to agencies serving victims of human trafficking, including but not limited to law enforcement agencies, prosecutorial agencies, and victim service agencies. The Office of the Attorney General must promulgate administrative regulations to develop procedures for distributing funds pursuant to this section. This administrative regulation governs the distribution of funds from the Human Trafficking Victims Fund.

Section 1. Office of the Attorney General's Use of Funds. (1) ***In accordance with KRS 529.140(3),*** the Office of the Attorney General shall use funds received to maintain programs for***:***
(a) The prevention of human trafficking***;[~~,~~]***
(b) The provision of[~~provide~~] education, training, or public outreach programs about human trafficking***;[~~,~~]*** and
(c) Conducting[~~conduct~~] human trafficking investigations.
(2) When distributing funds under this subsection, the Office of Attorney General shall document the activity for which funds were distributed and the total cost of the activity.

Section 2. Distribution of Funds. (1) The Office of Attorney General may distribute funds to agencies serving victims of human trafficking, ***such as[~~including but not limited to~~]*** law enforcement agencies, prosecutorial agencies, and victim service agencies.
(2) The Office of the Attorney General may also recoup costs for conducting any programs or trainings***, in accordance with KRS 529.140(3)***.
(3) An agency wishing to receive funds from the Human Trafficking Victims Fund shall complete the Human Trafficking Victims Fund Application.

Section 3. Limitation on Use of Funds Under KRS 529.140(3)(b). The Cabinet for Health and Family Services shall use funds received to serve minor victims of human trafficking under KRS 620.029.

Section 4. Incorporation by Reference. (1) "Human Trafficking Victims Fund Application, August 2021," is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Attorney General's Web site at ag.ky.gov.

CONTACT PERSON: Catherine York, Office of Trafficking and Abuse Prevention and Prosecution, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601; phone 502-696-5670; fax 502-573-1009; email Catherine.york@ky.gov.

BOARDS AND COMMISSIONS
Board of Pharmacy
(As Amended at ARRS, November 9, 2021)

201 KAR 2:076. Compounding.

RELATES TO: KRS 217.055(2), 217.065(7), 315.020(1), 315.035(6), 315.0351, ***315.121,*** 315.191(1)(a), (g)
STATUTORY AUTHORITY: KRS 315.020(1), 315.035(6), 315.0351, 315.191(1)(a), (g)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020(1) requires the owner of a pharmacy who is not a pharmacist to place a pharmacist in charge of the owner's pharmacy. KRS 315.035(6) authorizes the board to promulgate administrative regulations to assure ***that proper equipment and reference material is on hand considering the nature of the pharmacy practice conducted at the particular pharmacy and to assure reasonable health and safety standards for areas within the pharmacies, which are not subject to these standards under CHFS [~~minimum standards of practice of compounding by pharmacies and pharmacists, and to assure the safety of all products provided to the citizens of the Commonwealth~~]***. KRS 315.191(1) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. This administrative regulation establishes the requirements for compounding non-sterile and sterile preparations.

Section 1. (1) A policy and procedure manual for non-sterile and sterile compounding shall be readily available at a pharmacy for inspection purposes.
(2) A copy of the manual shall be made available to the board upon request.
(3) The manual shall be reviewed and revised on an annual basis.

Section 2. (1) [~~Effective January 1, 2018,~~] All[~~all~~] non-sterile compounded preparations shall be compounded pursuant to United States Pharmacopeia (USP) 795, unless specified portions submitted by a pharmacist have been waived by the board. Notwithstanding any USP guidance to the contrary, the addition of flavoring to a drug shall not be considered non-sterile compounding, ***if the[~~when such~~]*** additive:
(a) Is inert, nonallergenic, and produces no effect other than the instillation or modification of flavor; and
(b) Is not greater than five (5) percent of the drug product's total volume.
(2) [~~Effective January 1, 2018,~~] All[~~all~~] sterile compounded preparations shall be compounded pursuant to USP 797, unless specified portions submitted by a pharmacist have been waived by the board.
(3) All preparation, compounding, dispensing and repackaging of radiopharmaceuticals shall be pursuant to United States Pharmacopeia (USP) 825, unless specified portions submitted by a pharmacist have been waived by the board.
(4) [~~After January 1, 2018,~~] All[~~all~~] written waiver requests submitted by a pharmacist shall be considered by the Board at its next regularly scheduled meeting.
(5)[~~(4)~~] The board, upon a showing of good cause and in balancing the best interest of the public health, safety, and welfare, may waive the requirement of any specified portion of USP 795,[~~or~~] 797 or 825.

Section 3. (1) A facility that compounds non-sterile or sterile preparations shall be managed by a pharmacist-in-charge (PIC) licensed to practice pharmacy in the Commonwealth and who is knowledgeable in the specialized functions of preparing and dispensing compounded non-sterile and sterile preparations, including the principles of aseptic technique and quality assurance.
(2) The PIC shall be responsible for the: purchasing, storage, compounding, repackaging, dispensing, distribution of all drugs and preparations, development and continuing review of all policies

and procedures, training manuals, quality assurance programs, and participation in those aspects of the facility's patient care evaluation program relating to pharmaceutical material utilization and effectiveness.

(3) The PIC may be assisted by additional pharmacy personnel adequately trained, to the satisfaction of the PIC, in this area of practice and for each product they will be compounding.

Section 4. (1) The pharmacist shall receive a written, electronic, facsimile, or verbal prescription, or medical order from a prescriber before dispensing any compounded, non-sterile or sterile preparation. These prescriptions or medical orders shall contain the following:

(a) Patient's name*[,]* and species**,** if not human;

(b) Patient's address on controlled substances prescriptions or location (room number);

(c) Drug name and strength;

(d) Directions for use;

(e) Date;

(f) Authorized prescriber's name;

(g) Prescriber's address and DEA number, if applicable;

(h) Refill or end date instructions, if applicable; and

(i) Dispensing quantity, if applicable.

(2) A pharmacy generated patient profile shall be maintained separate from the prescription file. The patient profile shall be maintained under the control of the PIC for a period of two (2) years following the last dispensing activity. In addition, a medication administration record (MAR) as part of the institutional record shall be retained for a period of five (5) years from date of the patient's discharge from the facility, or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer. Supplemental records may also be employed as necessary. The patient profile shall contain:

(a) Patient's name;

(b) Name of compounded preparation dispensed;

(c) Date dispensed;

(d) Drug content and quantity; and

(e) Patient's directions.

(3) Each compounded preparation dispensed to patients shall be labeled with the following information:

(a) Name, address, and telephone number of the licensed pharmacy, if product will leave the premises;

(b) Date;

(c) Identifying number;

(d) Patient's full name;

(e) Name of each drug, strength, and amount;

(f) Directions for use, including infusion rate;

(g) Required controlled substances transfer warnings, ***if****[where]* applicable;

(h) Beyond use date;

(i) Identity of dispensing pharmacist;

(j) Storage requirements, ***if****[when]* applicable; and

(k) Auxiliary labels, ***if****[when]* applicable.

(4) The PIC shall maintain access to and submit, as appropriate, ***these****[such]* records and reports as are required to ensure the patient's health, safety, and welfare. Records shall be readily available, maintained for two (2) years at a facility not computerized, but for five (5) years at a facility utilizing computerized recordkeeping, and subject to inspection by the Board of Pharmacy or its agents. These shall include the following:

(a) Patient profile;

(b) Purchase records;

(c) Biennial controlled substances inventories;

(d) Policy and procedures manual;

(e) Policies and procedures for hazardous wastes, if applicable;

(f) Quality assurance records; and

(g) ***[Such]*** Other records and reports as may be required by ***KRS 217 or 315 and 201 KAR Chapter 2****[law and rules and administrative regulations of the Kentucky Board of Pharmacy]*.

(5) Information regarding individual patients shall be maintained in a manner to assure confidentiality of the patient's records. Release of this information shall be in accordance with federal and state laws.

(6) The PIC shall be responsible for the environmental control of all products shipped. Any compounded product that is frozen or requires refrigeration shall be shipped or delivered to a patient in appropriate temperature controlled delivery containers, if the product leaves the premises.

(7) The PIC shall be responsible for assuring that there is a system for the disposal of hazardous waste in a manner that does not endanger the public health.

Section 5. Hazardous Drugs. (1) [~~Effective January 1, 2018,~~] All [~~all~~] non-sterile preparations that contain hazardous substances shall be compounded pursuant to USP 795.

(2) [~~Effective January 1, 2018,~~] All [~~all~~] sterile compounded preparations that contain hazardous substances shall be compounded pursuant to USP 797.

Section 6. Violation of any provision of this administrative regulation shall constitute unethical or unprofessional conduct in accordance with KRS 315.121.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ***"***USP 795, Revision Bulletin, Official***"*** January 1, 2014; [~~and~~]

(b) ***"***USP 797, Revision Bulletin, Official***"*** June 1, 2008;[~~.~~] and

(c) ***"***USP 825, Revision Bulletin, Official, Official***"*** December 1, 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, [~~Suite 300, 125 Holmes Street,~~] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at https://pharmacy.ky.gov/statutesandregulations/Pages/default.aspx.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

BOARDS AND COMMISSIONS
Board of Licensure for Long-Term Care Administrators
(As Amended at ARRS, November 9, 2021)

201 KAR 6:020. Other requirements for licensure.

RELATES TO: KRS 216A.070(1), 216A.080(1)

STATUTORY AUTHORITY: KRS 216A.070, 216A.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070 requires the Kentucky Board of Licensure for Long-Term Care Administrators to develop, impose, and enforce standards for licensure, and authorizes the Board to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.080 authorizes the board to promulgate administrative regulations to establish requirements for applicants seeking licensure. This administrative regulation establishes requirements for examination and licensure.

Section 1. Examination. (1) The examination administered and verified by the National Association of Long-Term Care Administrator Boards (NAB) shall serve as the board approved examination required by KRS 216A.080(d).

Section 2. Requirements. ***In addition to meeting all of the requirements set forth in KRS 216A.080(1),*** an applicant for a long-term care administrator license shall***[, in addition to meeting all of the requirements set forth in KRS 216A.080(1)]***:

(1) Have satisfactorily completed a course of study for, and have been awarded a baccalaureate degree from, an accredited

college or university accredited by an agency recognized by the United States Department of Education;

(2) Submit to the Board of Licensure for Long-Term Care Administrators documentation of a passing NAB exam score, as defined by NAB for the period in which the exam was completed. Passing scores may be from up to two (2) years before or one (1) year following the filing of an application for licensure or reinstatement;

(3)(a) Have a bachelor's or master's degree from an academic program accredited by NAB which was awarded within two (2) years of the date of the application; ***[or]***

(b) Have completed an internship, that is at least 1,000 hours in length, which is a part of a degree in long-term care administration or a related field; or

(c) Have six (6) months of continuous management experience in a long-term care facility. If part-time, not less than 1,000 hours of management experience within a twenty-four (24) month period. This experience shall be completed up to two (2) years before or one (1) year following the date of application. The management experience shall include evidence of responsibility for:

1. Personnel management;
2. Budget preparation;
3. Fiscal management;
4. Public relations; and
5. Regulatory compliance and quality improvement ***in the context of a long-term care facility***.[

~~(b) An internship, that is at least 1,000 hours in length, which is a part of a degree in long-term care administration or a related field; or~~

~~(c) A bachelor's or master's degree from an academic program accredited by NAB which was awarded within two (2) years of the date of the application;~~]

(4) Submit two (2) professional letters of reference; and

(5) Submit Form 1, [~~an~~]"Application for Licensure[~~.~~]" and Form 2, ***[a]*** "Work Verification Form", if required.

Section 3. Qualification. An applicant currently holding a Health Services Executive (HSE) qualification from NAB shall be considered to have met the requirements of Section 2 of this administrative regulation and[~~. Applicants~~] shall submit documentation of a current HSE qualification from NAB.

Section 4. Any application not completed within one (1) year of the date of application shall be deemed incomplete and withdrawn.

Section 5. Notification. A licensee shall provide the board with written notification within thirty (30) days of the occurrence of any of the following:

(1) Change of home address;

(2) Change of employer;

(3) Conviction of a felony or misdemeanor:

(a) A licensee providing notice of a conviction shall provide a copy of the judgment in the case.

(b) A plea of nolo contendere or an Alford plea shall not absolve the licensee of an obligation to report a conviction; or

(4) Immediate Jeopardy or Substandard Level of Care notice received from the Cabinet for Health and Family Services by the long-term care facility at which the licensee serves as the administrator of record. A licensee providing notice of a citation shall provide a copy of the inspection report and submitted plan of correction.

Section 6. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) Form 1, "Application for Licensure", ***November[June]*** 2021; and[~~May 2018, is incorporated by reference.~~]

(b) Form 2, "Work Verification Form", June 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators, [~~Department for Professional Licensing,~~] 500 Mero Street, [~~2SC32~~] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available at https://ltca.ky.gov/.

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street 264 SC, office phone (502) 782-8805; email KevinR.Winstead@ky.gov.

BOARDS AND COMMISSIONS
Board of Dentistry
(Technical Amendment at ARRS, November 9, 2021)

201 KAR 8:520. Fees and fines.

RELATES TO: KRS 218A.205(3)(e)4., 313.022, 313.030, 313.100(2)(c)

STATUTORY AUTHORITY: KRS 218A.205(3)(e)4., 313.022(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.022(1) requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes fees, charges, and fines for the issuance, renewal, and reinstatement of licenses, for services and materials provided by the board, for investigations, and for infractions.

Section 1. Dentists. (1) The initial licensure fee for a [~~general~~] dental license applied for in the first year of the biennial license period [~~a nonrenewal year~~]shall be $325.

(2) The initial licensure fee for a [~~general~~]dental license applied for in the second year of the biennial license period [~~a renewal year~~] shall be $175.

(3) The renewal fee for a [~~general~~]dental license appropriately renewed **[~~on or~~]** before the expiration of the license shall be $295.

(4) The [~~renewal~~]reinstatement fee for an expired [~~a general~~]dental license reinstated [~~renewed~~] between January 1 and January 15 of the year following the expiration of the license shall be $**575[~~280 in addition to the renewal fee~~]**.

(5) The [~~renewal~~]reinstatement fee for an expired [~~a general~~]dental license reinstated [~~renewed~~]between January 16 and January 31 of the year following the expiration of the license shall be $**835[~~560 in addition to the renewal fee~~]**.

(6) The [~~renewal~~]reinstatement fee for an expired [~~a general~~]dental license reinstated [~~renewed~~]on or after February 1 of the year following the expiration of the license shall be $***1,415[1,1415]***[**1,120 ~~in addition to the renewal fee~~].**

(7) The **reinstatement fee for a properly retired dental license shall be $325[~~initial licensure fee and renewal fee for a charitable limited dental license shall be twenty-five (25) dollars~~]**.[~~The initial fee for a dental anesthesia or sedation permit shall be $250.~~

~~(8) The renewal fee for a dental anesthesia or sedation permit shall be seventy-five (75) dollars and is in addition to the renewal fee for a general dental license.~~

~~(9) The initial fee for an anesthesia or sedation facility certificate shall be $250.~~

~~(10) The renewal fee for an anesthesia or sedation facility certificate shall be seventy-five (75) dollars.~~]

(8)[~~(11)~~] The initial licensure fee for a dental specialty license[~~application fee~~] shall be $100.

(9)[~~(12)~~] The renewal fee for a dental specialty license **properly renewed before the expiration of the license** [~~renewal fee~~]shall be fifty (50) dollars **[~~and is~~]** in addition to the renewal fee for a **standard** [~~general~~]dental license.

(10)[~~(13)~~] The reinstatement fee for **an expired** [~~reinstatement of~~] a [~~properly~~]**[~~retired~~]** [~~general~~]dental **specialty** license shall be **fifty (50) dollars in addition to the reinstatement fee for an expired standard dental license [$~~325~~]**[~~350~~].

(11)[~~(14)~~] The reinstatement fee for [~~reinstatement of~~] a **properly** [~~properly~~]retired dental specialty license shall be fifty (50) dollars **[~~and is~~]** in addition to the reinstatement [~~renewal~~]fee for a **retired** standard [~~general~~] dental license.

(12) **The initial licensure fee and renewal fee for a charitable limited dental license shall be twenty-five (25) dollars.**

(13) The initial fee for a dental anesthesia or sedation permit

shall be $250.

(14)[(~~(13)~~] The renewal fee for a dental anesthesia or sedation permit **properly renewed before the expiration of the permit** shall be seventy-five (75) dollars.

(15) The reinstatement fee for an expired dental anesthesia or sedation permit shall be seventy-five (75) dollars.

Section 2. Dental Hygienists. (1) The initial licensure fee for a dental hygiene license applied for in the first year of the biennial license period [~~a nonrenewal year~~]shall be $125.

(2) The initial licensure fee for a dental hygiene license applied for in the second year of the biennial license period [~~a renewal year~~] shall be seventy-five (75) dollars.

(3) The renewal fee for a dental hygiene license appropriately renewed **[~~on or~~]** before the expiration of the license shall be $110.

(4) The [~~renewal~~]reinstatement fee for an expired dental hygiene license reinstated [~~renewed~~]between January 1 and January 15 of the year following the expiration of the license shall be $**240[~~130 in addition to the renewal fee~~].**

(5) The [~~renewal~~]reinstatement fee for an expired dental hygiene license reinstated [~~renewed~~]between January 16 and January 31 of the year following the expiration of the license shall be $**370[~~260 in addition to the renewal fee~~]**.

(6) The [~~renewal~~]reinstatement fee for an expired dental hygiene license reinstated [~~renewed~~]on or after February 1 of the year following the expiration of the license shall be $**630[~~520 in addition to the renewal fee~~].**

(7) The initial licensure fee and renewal fee for a charitable limited dental hygiene license shall be twenty-five (25) dollars.

(8) The initial registration fee to administer local anesthesia [~~registration fee~~]shall be fifty (50) dollars.

(9)[~~(8)~~] The initial registration fee to practice under [~~dental hygiene~~] general supervision [~~registration fee~~]shall be fifty (50) dollars.

(10)[~~(9)~~] The initial registration fee to administer an [~~dental hygiene~~] intravenous access line [~~registration fee~~]shall be fifty (50) dollars.

(11)[~~(10)~~] The initial registration fee to perform [~~dental hygiene~~]laser debridement [~~registration fee~~]shall be fifty (50) dollars.

(12)[~~(11)~~] The initial registration fee to be a public health registered dental hygienist shall be fifty (50) dollars.

(13) The reinstatement fee for [~~reinstatement of~~]a [~~properly~~] **properly** retired dental hygiene license shall be $125.

Section 3. Anesthesia and Sedation Facilities. (1) The initial certification fee for an anesthesia or sedation facility shall be $250.

(2) The renewal fee for an anesthesia or sedation facility certificate shall be seventy-five (75) dollars.

(3) The reinstatement fee for an expired anesthesia or sedation facility certificate reinstated between January 1 and January 15 of the year following the expiration of the certificate shall be $**125[~~50 in addition to the renewal fee~~]**.

(4) The reinstatement fee for an expired anesthesia or sedation facility certificate reinstated between January 16 and January 31 of the year following the expiration of the certificate shall be $**175[~~100 in addition to the renewal fee~~]**.

(5) The reinstatement fee for an expired anesthesia or sedation facility certificate reinstated on or after February 1 of the year following the expiration of the certificate shall be $**225[~~150 in addition to the renewal fee~~].**

Section 4. Dental Laboratories. (1) The initial registration fee for a commercial dental laboratory shall be $150.

(2) The renewal fee for a dental laboratory registration appropriately renewed on or before the expiration of the registration shall be $150.

(3) The reinstatement fee for an expired dental laboratory registration reinstated between August 1 and August 15 following the expiration of the certificate shall be $**250[~~100 in addition to the renewal fee~~]**.

(4) The reinstatement fee for an expired dental laboratory registration reinstated between August 16 and August 31 following the expiration of the certificate shall be $**300[~~150 in addition to the renewal fee~~]**.

(5) The reinstatement fee for an expired dental laboratory registration reinstated on or after September 1 following the expiration of the certificate shall be $**350[~~200 in addition to the renewal fee~~]**.

Section 5. General Fees. (1) The fee for the verification of a license shall be forty (40) dollars.

(2) [~~The fee for a duplicate license shall be twenty-five (25) dollars.~~

~~(3)~~] The fee for a contact list for either currently licensed dentists, currently licensed dental hygienists, or currently registered dental assistants shall be:

(a) $100 for lists obtained for not-for-profit use; and

(b) $1,000 for lists obtained for profit use.

(3)[~~(4) The fee for a query of the National Practitioner Data Bank shall be twenty-five (25) dollars.~~]

~~(5)~~] The fee for any returned check or rejected electronic payment shall be [~~twenty-five (25) dollars~~]equal to the fee charged to the board by the bank.

Section 6.[~~Section 4.~~] General Fines. (1) **The payment of reinstatement fees shall not be construed to exempt licensees and other entities regulated by the board from additional penalties associated with practicing or operating without an appropriate license, permit, or registration.**

(2) Fines shall be determined [~~may be agreed to~~]by settlement or agreed order [~~agreement or as listed in this section.~~]as negotiated by the Law Enforcement Committee or as issued by a hearing panel in accordance with KRS 313.100.[

~~(2) The costs of a disciplinary action taken as a result of a hearing shall be equal to the amount of all actual and necessary costs associated with the hearing.~~

~~(3) If a licensee is found to be deficient on hours following a continuing education audit, the fine shall be $200 per hour deficient not to exceed $5,000.~~

~~(4) The fine for failure of a follow-up infection control inspection shall be $500.~~

~~(5) The fine for failure of a follow-up anesthesia or sedation facility inspection, performed no sooner than thirty (30) days following an initial failed inspection, shall be $1,500.~~]

Section 7.[~~Section 5.~~] All fines and fees paid to the board shall be nonrefundable.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: October 15, 2021

FILED WITH LRC: October 15, 2021 at 11:45 a.m.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, 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 regulation sets amounts for the various fees and fines issued by the board.

(b) The necessity of this administrative regulation: KRS 313.022(1) requires the board to promulgate administrative regulations regarding fees and fines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes a schedule of reasonable fees, fines, and other charges that do not exceed the national average of other state dental boards, as required by statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes standardized fees and fines in conformity with its authorizing statute.

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

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment provides language to clarify fee structures and categories.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to minimize confusion about fee structures and improve conformity with KRS 313.030(4).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment updates and clarifies the schedule of fees and fines in conformity with its authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that the schedule of fees and fines issued by the board is clear, appropriate, and uniformly applied in compliance with applicable law.

(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 six thousand dentists and dental hygienists licensed in Kentucky, as well as future applicants for such licenses. Dental labs doing business in Kentucky will also be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it 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: This regulation will continue to require that entities pay all applicable fee(s). The vast majority of entities will experience no changes as a result of the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs for most entities will be unchanged as a result of this amendment. Exceptions include the establishment of a $25 limited license fee for out of state providers performing charitable work in Kentucky as well as various penalties for the late renewal of sedation facilities and dental labs, which range from $50 to $200. Also, licensees who pay fines associated with settlement agreements or administrative hearings will no longer need to conform to a mandatory fine schedule. Instead, these punitive costs will be determined on a case-by-case basis.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from the transparency and detail this amendment adds to the existing administrative regulation, thereby reducing non-compliance and associated costs.

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

(a) Initially: No added costs are anticipated as a result of the amendment.

(b) On a continuing basis: Added costs as a result of this amendment are anticipated to be negligible or nonexistent.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Licensure fees will fund implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The new fee categories will generate minimal revenue but should still cover the negligible expenses associated with implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes, this administrative regulation is specifically intended to provide a fee schedule in accordance with its authorizing statute.

(9) TIERING: Is tiering applied? No, this amendment 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 313.022.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to alter the revenue generated by the existing administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not expected to alter the revenue generated by the existing administrative regulation.

(c) How much will it cost to administer this program for the first year? This amendment is not expected to alter the costs associated with the existing administrative regulation.

(d) How much will it cost to administer this program for subsequent years? This amendment is not expected to alter the costs associated with the existing administrative regulation.

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

Revenues (+/-): None expected. Any increase in revenue from fees should be negligible and will likely be offset by a decrease in revenue from fines as a result of improved compliance.

Expenditures (+/-): None expected.

Other explanation: Not applicable.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, November 9, 2021)

301 KAR 2:015. Feeding of wildlife.

RELATES TO: KRS 150.015

STATUTORY AUTHORITY: 150.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015 requires the department to protect and conserve the wildlife of this Commonwealth. KRS 150.025(l)(h) authorizes the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 150. This administrative regulation establishes restrictions on the feeding of wildlife that will serve to protect wildlife from disease and toxic substances that may cause harm to the wildlife population if left unregulated. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.

Section 1. Definitions. (1) "Captivity" means confinement by fence or other structure or restraint intended to prevent escape.

(2) "Curtilage of the home" means the area encompassing the grounds immediately surrounding any home or group of homes used in the daily activities of domestic life, and may or may not be enclosed by a fence or other barrier, and includes areas occupied by captive cervids as established in[~~pursuant to~~] 301 KAR 2:083 and wildlife held in captivity for rehabilitation purposes as established in[~~pursuant to~~] 301 KAR 2:075 or held in captivity as established in[~~pursuant to~~] 301 KAR 2:081 and 2:082.

(3) "Feeding" means willingly, wantonly, or knowingly depositing, distributing, or scattering of shelled, shucked, or unshucked corn, millet, milo, safflower seed, sunflower seed, thistle, wheat, or other grain, or any manufactured feed to be consumed by wildlife, but shall not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under

normal agricultural practices.

Section 2. Recreational Feeding of Wildlife. (1) Wildlife shall not be fed from March 1 through May 31 except as provided in subsections (2) and (3) of this section.

(2) Wildlife may only be fed year round:

(a) In[~~in~~] public areas not open to legal hunting or trapping, unless otherwise prohibited by statute,[~~an~~] administrative regulation, or municipal ordinance;[~~.~~]

(b) Within[~~(2) Wildlife may be fed year round within~~] the curtilage of the home; and

(c) In[~~.~~

~~(3) Wildlife shall not be fed from March 1 through May 31 except as provided in subsections (1) and (2) of this section.~~

~~(4) The prohibition established in subsection (3) of this section shall not apply to the feeding of:~~

~~(a) Fish; or~~

~~(b) Wildlife in~~] a zoo or other facility that lawfully keeps or exhibits wildlife for rehabilitation, rescue, or public viewing.

(3) Fish may be fed year round.

Section 3. Chronic Wasting Disease. In a department-designated Chronic Wasting Disease Surveillance Zone or Management Zone county, specified on the department's Web site at fw.ky.gov, persons shall not bait or feed using grain, salt, mineral, or other ingested attractants, except that the following shall be exempted:

(1) Normal agricultural practices;

(2) Wildlife food plots or plantings;

(3) Bird feeders within the curtilage of the home; and

(4) Furbearer trapping, except that trappers shall not use grain, salt, or mineral.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Parole Board
(As Amended at ARRS, November 9, 2021)

501 KAR 1:050. Granting final discharge from parole.

RELATES TO: KRS 439.352, 439.356, 439.358, ***439.563,*** 532.043[~~523.043~~], 532.060(3)

STATUTORY AUTHORITY: KRS 439.330(1)(g), 439.340(3)(b), 439.354, 439.563

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3)***(b)*** authorizes the Parole Board to establish administrative regulations concerning matters that come before it. KRS 439.330(1)(g) ***authorizes*** ***[establishes the authority of]*** the Parole Board to grant a final discharge from parole. KRS 439.563 prohibits final discharge from parole if an identified victim of the crime or a government agency to whom restitution has been ordered has not yet been paid in full. ***This administrative regulation establishes the procedure for final discharge for parole.***

Section 1. If an offender paroled prior to July 15, 1998, reaches the maximum expiration date of his sentence, a final discharge from parole shall be issued automatically by the board.

Section 2. (1) If an offender paroled on or after July 15, 1998, owes restitution, he shall not automatically receive a final discharge from parole upon reaching the maximum expiration of his sentence.

(2) The board shall not issue a final discharge to a parolee until he pays restitution in full in compliance with KRS 439.563(5).

(3) Verification of payment of restitution shall be obtained from the parole officer.

The Kentucky Parole Board approved this administrative regulation at its meeting on July 26, 2021 prior to its filing with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2021)

501 KAR 2:020. Definitions for 501 KAR Chapter 2.

RELATES TO: KRS 532.060, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(5)[~~(4)~~] requires [~~the Department of Corrections to house~~] qualifying Class D and Class C felons to serve their sentences in [~~county~~] jails [~~and promulgate administrative regulations establishing required programs for the jails where they are housed~~]. ***KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet.*** This administrative regulation establishes the definitions used in 501 KAR Chapter 2 for the Class C and D felons serving their sentences in the jails pursuant to the statute instead of in a state correctional institution[~~, which implements the required housing program~~].

Section 1. Definitions. (1) "Assessment and Classification Center" or "AC Center" means the units at Roederer Correctional Complex, [~~and~~] Kentucky Correctional Institution for Women, and Ross Cash Center that initially receive all convicted felons, except for those sentenced to the death penalty, who are committed to the Kentucky Department of Corrections.

(2) "Class C felon" means an inmate convicted of a Class C felony that meets the requirements established in KRS 532.100(5)(c)[~~532.100(4)(c)1.~~]

(3) "Class D felon" means an inmate convicted of a Class D felony that meets the requirements established in KRS 532.100(5)[~~(4)~~] (a), (b), or (c).

(4) ["~~Classification branch manager" means the Department of Corrections employee who approves inmates for placement in jails and in halfway house facilities throughout the state and oversees the prerelease programs.~~

~~(5) "Close custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.~~

~~(6)~~] "Community custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(5)[~~(7)~~] "Controlled intake inmate" means a convicted felon who is entering into the Kentucky adult correctional system.

(6) ***"***Deaf or hard of hearing inmate" means an inmate who ***has a hearing loss, which qualifies the inmate as an individual with a disability under the Americans with Disability Act (ADA) [~~is unable to hear well enough to rely on hearing as a means of processing information, who relies on auxiliary aids and services to effectively communicate, and who qualifies as an individual with a disability under the Americans with Disabilities Act (ADA), including deaf, hard of hearing, or hearing impaired person~~]***. See 42 U.S.C. § 12102(4).

(7)[~~(8)~~] "Department" is defined by KRS 441.005(5).

(8) "Director of Population Management" means the Department of Corrections employee who approves inmates for placement in jails and in halfway house facilities throughout the state.

(9) "Educational good time" means a credit on an inmate's sentence for an educational accomplishment pursuant to KRS 197.045(1)(a)2.

(10) "Escape" is defined by KRS 520.010(5).

(11) "Jail" means a jail as defined by KRS 441.005(1) or a regional jail as defined KRS 441.005(7).

(12) "Jail administrator" means the official appointed by a regional jail authority and charged with the responsibility of administering the regional jail.

(13) "Jail personnel" is defined by KRS 441.005(6).

(14) "Jailer" means:

(a) The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the jail;

(b) The administrator or executive director of a department as defined by KRS 67B.020(1); [~~or~~]

(c) The administrator or director of a correctional services division as described by KRS 67A.028; or

(d) The administrator of a regional jail as defined by KRS 441.005(7).

(15) "KOMS" means Kentucky Offender Management System.

(16) "Maximum custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(17) "Medium custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(18) "Meritorious good time" means a credit on an inmate's sentence pursuant to KRS 197.045(1)(b)2.

(19) "Minimum custody" means that the inmate meets the requirements for that classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.

(20) "Qualified inmate" means an inmate that may be housed in [~~county~~] jails electing to house state inmates as described in KRS 532.100(5)[~~(4)~~].

(21) [~~"Restricted custody" means that the inmate meets the requirements for that subcategory of the minimum custody classification level established in the Department of Corrections Classification Manual, incorporated by reference in 501 KAR 6:080.~~

~~(22)~~] "Statutory good time" means a credit on an inmate's sentence pursuant to KRS 197.045(1)(b)1.

(22)[~~(23)~~] "Waiver" means that the department has granted the county an exemption from housing any Class D or Class C felons in its ***[county]*** jail pursuant to KRS 532.100.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, Justice.RegsContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2021)

501 KAR 2:060. Procedures for housing of Class C and D [~~and Class C~~] felons.

RELATES TO: KRS 196.035, 197.020, 197.045, 431.215, 441.045, 441.075, 441.510, 532.100

STATUTORY AUTHORITY: KRS 196.035, 197.020, 532.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 532.100(5) [~~532.100(4)~~] requires the Department of Corrections to house qualifying Class C and D [~~and Class C~~] felons in [~~county~~] jails. ***KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet.*** This administrative regulation establishes the procedures to implement the required housing program.

Section 1. Eligibility. Any county housing qualified inmates pursuant to KRS 532.100(5) [~~532.100(4)~~] shall be eligible to continue to do so unless the department, through its minimum jail standards enforcement procedures established by KRS 441.075, orders a [~~county~~] jail to cease housing Class C and D [~~and Class C~~] felons.

Section 2. Submission of Documents for Class D Felons. In any [~~county~~] jail housing Class D felons, the jailer shall forward to the assessment and classification center the following documents, within ten (10) working days of receipt of the judgment, for each Class D felon for whom a transfer has not been requested:

(1) Picture, which shall be updated annually in accordance with Section ***12 [~~13~~]*** of this administrative regulation;

(2) Any detainers;

(3) Any incident or disciplinary reports; and

(4) Body identification sheet.

Section 3. Custody Assignment for Class D Felons. (1) The assessment and classification center staff shall, within ten (10) working days of receipt of the presentence investigation and the judgment documents, review the inmate file and assign a custody classification level to the Class D felon.

(2) The AC Center staff shall notify the jailer of the custody classification level assignment. Offender Information Services[~~Branch~~], Central Office, shall audit the file within five (5) working days of receipt.

(3) If the custody level assigned is minimum or community, the Class D felon may:

(a) Participate in community service work or any program offered inside or outside the secure perimeter of the jail; and

(b) Be housed inside the secure perimeter of the jail, in the restricted custody area of the jail, or in a restricted custody center.

(4) If the custody level assigned is [~~restricted, the Class D felon:~~

~~(a) May only participate in community service work under direct supervision of jail personnel;~~

~~(b) Shall not participate in any outside program; and~~

~~(c) Shall be housed:~~

~~1. Inside the secure perimeter of the jail;~~

~~2. In a restricted custody area with a barrier fence; or~~

~~3. In a restricted custody center with a barrier fence.~~

~~(5) If the custody level assigned is~~] medium[~~, close,~~] or maximum, the Class D felon:

(a) Shall not be eligible to participate in any program or work outside the secure perimeter of the jail; and

(b) Shall be housed in the secure perimeter of the jail.

(5)[~~(6)~~] The jailer may request the department to review the assignment ninety (90) days from the date of the last assignment. Any additional custody review may be completed as deemed necessary by the Director of Population Management [~~Classification Branch Manager~~].

Section 4. Assignment of Class C Felons. (1) The assessment and classification center shall identify and inform the jailer of a Class C felon who qualifies under KRS 532.100(5)(c)1. [~~532.100(4)(c)1.~~] to be housed in a ***[county]*** jail.

(2) The AC center shall notify the jailer when an inmate has been assigned as a Class C felon.

Section 5. Parole Board[~~Assessment Summary Reports~~]. (1) Prior to the meeting of the Parole Board, jail personnel shall provide each ***qualified*** inmate scheduled for review by the board with a jail offender Information ***to the Kentucky Parole Board*** form. Jail personnel shall submit the completed form to the Division of Local Facilities[~~prepare and submit an assessment summary report on each qualified inmate to the Offender Information Branch~~] via KOMS or electronically, as requested by the Parole Board.

(2) Jail personnel shall inquire if a qualified inmate scheduled for review by the board would like to waive his or her Parole Board hearing and request a serve out if the qualified inmate scheduled to meet the Parole Board has ninety (90) days or less remaining

until his or her minimum expiration date. If the qualified inmate decides to waive his or her Parole Board hearing and request a serve out, jail personnel shall have the inmate sign the Request Declining Parole form and submit it to the Parole Board via KOMS or electronically.

(3) Deaf or Hard of Hearing Inmate.

(a) If a deaf or hard of hearing inmate has a hearing before the Parole Board, the jail shall assist the Parole Board with appropriate accommodation **necessary for effective communication** for the inmate for the hearing.

(b) The jail shall provide headphones **if headphones are necessary to meet the needs of deaf and hard of hearing inmates for effective communication** or work with the Parole Board to provide other **necessary** hearing accommodation services for the Parole Board hearing.

Section 6. Transportation. Jail personnel shall be responsible for the transportation of a qualified inmate except as specified in KRS 431.215(1) and 441.510.

Section 7. Release Procedures. (1) The release of a qualified inmate shall follow the procedure established by CPP 25.6, incorporated by reference in 501 KAR 6:020.

(2)(a) Jail personnel shall not release a qualified inmate to any other ***[~~county~~]*** jail or agency without submission of external movement information to the Director of Local Facilities or designee. The information shall include:

1. Name;
2. Inmate number;
3. Facility transferring felon;
4. Facility receiving felon; and
5. Date transferred and received.

(b) Any jail that is under order of the department relating to restrictions on state inmates shall receive prior authorization from the Director of Local Facilities before requesting state inmates from the department or any other [~~county~~] jail.

(c) A qualified inmate shall not be released to another state or to federal authorities without advance notice and approval of the Director of Local Facilities or designee.

(3) Jail personnel shall notify the Director of Local Facilities or the Offender Information Services[~~Branch~~] of any detainer or holder lodged against the qualified inmate by another jurisdiction.

Section 8. ***(1) Furlough requests shall be submitted to the Classification Branch Manager.***

(2) Furloughs shall be governed by CPP 25.4, incorporated by reference in 501 KAR 6:020.

Section 9. [~~Furlough Program. (1) The Classification Branch Manager shall have the authority and responsibility to grant and monitor any furloughs of a qualified inmate.~~

~~(2) Eligibility for a furlough shall be determined in accordance with this subsection.~~

~~(a) The furlough of a qualified inmate shall be a privilege, not a right.~~

~~(b) To be considered for a furlough, a community or minimum custody qualified inmate shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.~~

~~(c) A Class D felon who is community custody or minimum custody or a Class C felon, who meets the requirement established in paragraph (b) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, beginning six (6) months after his final sentencing date. The total time on furlough shall not exceed eight (8) days each calendar year. There shall be a minimum of sixty (60) days between furloughs.~~

~~(d) To be considered for a furlough, a probation or parole violator who is a community or minimum custody qualified inmate shall have spent at least sixty (60) days in the county jail since the date of the custody assignment.~~

~~(e) A probation or parole violator who is a community or minimum custody qualified inmate, who meets the requirement established in paragraph (d) of this subsection, may be considered for a forty-eight (48) hour furlough each quarter, beginning six (6) months after his commitment date. The total time on furlough shall not exceed eight (8) days each calendar year. There shall be a minimum of sixty (60) days between furloughs.~~

~~(f) To be considered for a furlough, a qualified inmate shall meet the furlough criteria established in CPP 25.4, incorporated by reference in 501 KAR 6:020, with the exception of the six (6) continuous months of minimum or community custody requirement.~~

~~Section 9.~~] Escape. If a qualified inmate escapes, the jailer, jail administrator, or jail personnel shall immediately:

(1) Notify the Division of Local Facilities jail inspector;

(2) Notify Kentucky State Police (KSP) or local law enforcement;

(3) Activate VINE through use of the Emergency Override Line (EOL); and

(4) Enter the prisoner's escape status into the jail management system.

Section ***10[9]***[~~10~~]. Medical Needs. The department shall pay each jail a per diem for state prisoners as established by KRS 532.100(7) [~~532.100(6)~~]. The jail shall pay for routine medical and medication expenses ***but may charge a copay as provided by KRS 441.045(13)***. If the inmate requires an admission to a hospital with at least one (1) night stay or outpatient surgery in which a general anesthesia is used, the cost shall be paid by the department. The jailer, jail administrator, or jail personnel shall notify the Department of Corrections Medical Division designee if any qualified inmate is admitted to the hospital for twenty-four (24) hours or longer.

Section ***11[10]***[~~11~~]. Inmate Pay. A qualified inmate on a work assignment shall be paid in accordance with CPP 19.3.

Section ***12[11]***[~~12~~]. Good Time. For a qualified inmate housed in a ***[~~county~~]*** jail, the awarding of good time or sentence credit shall be in accordance with this section.

(1) Statutory good time shall follow the procedures established in KRS 197.045(1)(b)1.

(2) Meritorious good time shall follow procedures established in KRS 197.045(1)(b)2. and CPP 15.3, incorporated by reference in 501 KAR 6:020.

(3) Educational good time shall follow procedures established in KRS 197.045(1)(a)2. and CPP 20.1, incorporated by reference in 501 KAR 6:020.

(4) If the jail has a substance abuse program approved by the department, then the felon shall receive credit to his sentence allowed by KRS 197.045(1)(a)3.

Section ***13[12]***[~~13~~]. Annual Photograph. The jailer, jail administrator, or jail personnel shall take a photograph each year of each qualified inmate and immediately send it by United States mail, [~~or~~] electronically, or via KOMS to Department of Corrections, Offender Information Services, [~~Central Office,~~] P.O. Box 2400, Frankfort, Kentucky 40602.

Section ***14[13]***. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Information to the Kentucky Parole Board", ***[(]***2021***[), ~~is incorporated by reference~~]***; and

(b) "Request Declining Parole", ***[(]***2021***[)]***.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Corrections, Division of Population Management, 275 East Main Street, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site at https://corrections.ky.gov/About/Pages/lrcfilings.aspx.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2021)

501 KAR 3:110. Classification.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS ***196.035, 197.020,*** 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020 requires the Department of ***Corrections [~~Correction~~]*** to promulgate administrative regulations that include a requirement of a physical barrier between male and female prisoners. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for the classification of prisoners in full-service jails.

Section 1. Procedure. (1) Each jail shall develop a prisoner classification system, which shall be included in the facility's written policy and procedure manual.
(2) The prisoner classification system shall provide for separation of the following categories of prisoners:
(a) Male and female prisoners***, which*** shall be separated by a physical barrier, except in diversion holding areas[~~/holding~~];
(b) Mental inquest detainee and other prisoners;
(c) Mentally ill or intellectually disabled [~~mentally retarded~~] prisoner and other prisoners;
(d) Chemically incapacitated prisoner and other prisoners;
(e) A prisoner with a tendency to harm others, be harmed by others, or requiring administrative segregation and other prisoners; and
(f) A prisoner with a communicable disease and other prisoners.
(3) The criteria to be used in the classification of other prisoner categories shall be as follows:
(a) Seriousness of current offense;
(b) Institutional behavioral history;
(c) Special needs;
(d) Known criminal history; and
(e) Trustees.
(4) Trustees. The jailer or his designee shall base selection of prisoners for trustee status on the following criteria:
(a)[~~1.~~] The nature of the prisoner's offense and sentence;
(b)[~~2.~~] Previous escape attempts; and
(c)[~~3.~~] The generally positive nature of the prisoner's daily [~~"day-to-day"~~] behavior.
(5)[~~(4)~~] A prisoner's classification shall be reevaluated if the prisoner's status changes based on factors to include the following:[~~:~~]
(a) Results of a court appearance by the prisoner, such as being sentenced;
(b) Disciplinary hearing and action; and
(c) Reevaluation of the prisoner's physical, emotional, or mental condition.
(6)[~~(5)~~] The prisoner classification system shall prohibit discrimination or segregation based upon race, color, creed, or national origin.

Section 2. (1) Each ***jail [~~detention facility~~]*** with ***a*** direct supervision ***area [~~areas~~]*** shall, and other ***jails [~~detention facilities~~]*** may, develop a system of prisoner classification to assess prisoners for the purposes[~~purpose~~] of:
(a) Protecting public or institutional safety;
(b) Providing an acceptable level of health care services; and
(c) Considering the opportunity to provide programs intended to reduce the likelihood of reincarceration.
(2) The classification system shall provide for the assessment of prisoner risk and need, considering elements including:
(a) Need for medical care;
(b) Need for mental health care;
(c) Propensity for suicidal behavior;
(d) Potential conflict arising from contact with another individual or group within the facility[~~institution~~];
(e) Potential threat of escape;
(f) Potential threat to public safety if placed in a community release program;
(g) Potential risk to staff or another prisoner;
(h) Record of previous institutional behavior; and
(i) Assessment for participation in educational, vocational, rehabilitative, or work-related programming.
(3) Each classification system shall consider the development of the following components:
(a) An assessment of a prisoner upon intake to the facility to determine:
1. Legal custody;
2. Medical fitness for acceptance; and
3. Information asked of the arresting or transporting agent concerning the prisoner's potential risk and needs.
(b) A screening component to assess, as soon as practical after acceptance into the facility, the prisoner's risk and need for the purpose of determining appropriate housing, supervision requirements, and the need for providing immediate health care or other services.
(c) A primary classification of a prisoner shall be accomplished as soon as practical after his initial court appearance, or prior to a permanent housing placement within the facility[~~institutional~~] population to address the long term housing, supervision, and health care needs of the prisoner. Primary classification may also address the appropriateness of program placement in consideration of the needs of the prisoner and the potential risks to the community and the facility[~~institution~~] associated with the placement.
(4) A reclassification component shall be developed that reassesses the prisoner's risk, need, [~~and~~] housing assignment, and supervision based upon either time, event, change of status, or request.
(5) An instrument of assessment shall be developed for each of the classification components using sources including charged offense, criminal history of the prisoner, available institutional behavior history, interview, and observation of the prisoner, or other information sources available to the facility[~~institution~~].501 KAR 3:110. Classification.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2021)

501 KAR 3:130. Prison programs; services.

RELATES TO: KRS 439.179, 441.055, 441.125, 532.100
STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055, 532.100***(5)[(4)]***(d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 ***authorizes [~~requires~~]*** the secretary to promulgate administrative regulations he or she deems necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet, including qualification for the receipt of federal funds and for cooperation with other state and federal agencies. KRS 532.100***(5)[(4)]***(d) requires the Department of Corrections to

promulgate administrative regulations establishing required programs for a jail that houses state inmates under ***KRS 532.100(5)[~~this subsection~~]***. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for prisoner programs and services in those jails.

Section 1. Work Programs. (1) Written policy and procedure shall provide that prisoner programs and services shall be available and include social services, religious services, recreation and leisure time activities, and library services.

(2) Sentenced prisoners who perform work as authorized by KRS 441.125 may receive rewards in the form of sentence reductions or other privileges, if granted by the proper authority.

(3) Written policy and procedure shall provide that unsentenced prisoners shall not be required to work except to do personal housekeeping.

Section 2. Education Programs. (1) The jail shall develop a policy and procedure that encourages the implementation of education programs in the jail. The use[~~utilization~~] of community resources in these efforts shall also be encouraged to offset the costs of the programs.

(2) Education programs may be made available in accordance with KRS 439.179.

(3) State prisoners shall be provided the opportunity to attend adult basic education programs or to pursue a general educational development (GED) diploma.

Section 3. Library Services. If resources are available in the community, library services may be made available to all prisoners.

Section 4. Religious Programs. (1) Written policy and procedure shall ensure the constitutional rights of prisoners to voluntarily practice their own religious activities, subject to those limitations necessary to maintain the order and security of the jail.

(2) The jailer or designee shall ensure that an inmate has the opportunity to participate in practices of his religious faith in accordance with the Religion Reference Manual incorporated by reference in 501 KAR 6:080. For specific situations not addressed in the Religion Reference Manual, the jailer or designee may refer to department Policy and Procedure 23.1 incorporated by reference in 501 KAR 6:020.

(3) Inmate responsibilities.

(a) Upon entry into the correctional system, an inmate's religious preference shall be recorded on the inmate I.D. form.

(b) After three (3) months, an inmate may change his religious preference by contacting the jailer or designee.

(c) It shall be the inmate's responsibility to seek a job or program assignment that does not conflict with his religious beliefs and practices.

Section 5. Recreation Programs. (1) Written policy and procedure shall provide all prisoners with the opportunity to participate in at least one (1) hour of physical exercise per day with at least three (3) exercise periods per week outside the cell. There shall be available one (1) hour of outdoor recreation two (2) times per week if weather permits. Prisoners who pose a threat to the safety and security of the jail shall be denied outdoor recreation.

(2) Leisure time and recreation programs shall be scheduled to permit prisoners to participate in board games, arts and crafts, radio and television, or other activities designed to relieve idleness and boredom.

Section 6. Programs for State Prisoners. (1) State prisoners may be provided the opportunity to participate in work programs in accordance with KRS 441.125.

(2) Substance abuse programs. State prisoners shall be provided the opportunity to participate in self-help substance abuse programs offered within the jail. State prisoners who apply for treatment and are accepted by the Division of Addiction Services[~~Mental Health~~], shall be allowed to participate in the substance abuse program (SAP), if space is available or may be housed in jails offering the program, if space is available.

(3) Evidence based programs. Eligible state prisoners may be provided the opportunity to participate in evidence based programming offered within the jail with the approval of department staff. State prisoners who complete evidence based programming may be eligible to receive program completion credit, in accordance with CPP 15.4 incorporated by reference in 501 KAR 6:020.

Section 7. Required Documents. The jail may provide required documents to prisoners in an electronic format.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2021)

501 KAR 3:150. Hearings, procedures, disposition.

RELATES TO: KRS Chapter 13B, 441

STATUTORY AUTHORITY: KRS 13B.170, 196.035, 441.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. The Commissioner of the Department of Corrections is authorized by KRS 441.075(4) to hear matters covered by the order of the department requesting ***[~~county~~]*** jails, correctional or detention facilities to comply with the minimum standards for local jails pursuant to KRS 441.055 and to issue, modify or repeal the order at the conclusion of the hearing. ***This administrative regulations establishes procedures and definitions for administrative hearings.***

Section 1. Definitions. (1) "Day" means a calendar day.

(2) "Hearing officer" means a hearing officer appointed by the commissioner pursuant to KRS 441.075.

(3) "Order" means the order of the commissioner requiring the petitioner or petitioners to comply with the minimum jail standards for local jails as specified in the order.

(4) "Petitioner" means the jailer or county/judge executive who requests a hearing for review of the commissioner's order.

(5) "Proceeding" means any proceeding before the commissioner or before a hearing officer.

(6) "Standards" means the minimum jail standards for local jails as established by the department in 501 KAR Chapters 3, 7, and 13.

Section 2. Assignment of Hearing; Filings. (1) Pursuant to KRS 441.075(4), cases coming before the commissioner may be assigned to a hearing officer within the discretion of the commissioner for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the commissioner.

(2) A recommended order or adjudication by the hearing officer or the initial order of the commissioner, if dismissed or disposed of as provided in subsection (1) of this section, or any modification ***or [~~of~~]*** repeal of the initial order, shall become the final order of the commissioner under the provisions of KRS 441.075(4), appealable to the Franklin Circuit Court, thirty (30) days from the date of issue.

(3) Prior to the assignment of a case to a hearing officer, the

[~~county~~] jailer or county judge/executive shall, within seventy-two (72) hours of receipt of notification of the order, request in writing a public hearing before the commissioner or his designee on the matters covered by the order to the Commissioner of the Department of Corrections, Division of Local Facilities, P.O. Box 2400, Frankfort, Kentucky 40602-2400. Subsequent to the assignment of the case to a hearing officer and prior to the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice of hearing.

(4) All evidence and witnesses of both parties and interveners and all proof shall be presented at the hearing. Additional evidence shall not be permitted after the hearing except in unusual circumstances and within the discretion of the commissioner or the hearing officer.

(5) All hearings shall be held in Frankfort, Kentucky unless otherwise ordered by the commissioner.

(6) Unless otherwise ordered, all filing may be accomplished by:

(a) First class mail; or

(b) Sending to Jail.Inspections@ky.gov and including "Hearing" in the subject line of the message.

(7) Filing shall be deemed effective when mailed, if sent by first class mail, or when the email is received in the designated email account.

Section 3. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) This administrative regulation shall govern all proceedings before the department and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with KRS Chapter 13B and the Kentucky Rules of Civil Procedure.

Section 4. Computation of Time. If service of a pleading or documents is by mail pursuant to Section 2 of this administrative regulation, three (3) days shall be added to the time allowed by this administrative regulation for the filing of a responsive pleading.

Section 5. Notice and Time of Hearing. (1) Notice of hearings shall be given to all parties and interveners within forty-five (45) days from the receipt of the request for hearing unless otherwise ordered by the commissioner or his designee. A hearing shall not be held later than ninety (90) days from the date of request.

(2) The notice of hearing shall comply with KRS 13B.050(3).

Section 6. Continuance of Hearing. (1) Continuance of a hearing shall not be allowed except in the case of an extreme emergency or in usual circumstances.

(2) A request for a continuance shall be provided to the department at least three (3) days in advance of the time set for the hearing. The request for continuance shall include the reasons for the continuance.

(3) The hearing officer may consider a request for an extension during the hearing, if extenuating circumstances:

(a) Arise during the hearing; or

(b) Prevented compliance with the timing provisions of subsection (2) of this section.

(4) Continuance of the hearing not in excess of fifteen (15) days may be granted in the discretion of the hearing officer. One (1) additional continuance not in excess of fifteen (15) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. An additional continuance shall not be granted without approval of the commissioner.

Section 7. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the right[~~rights~~] to be served with a copy of the decision of the hearing officer.

(2) Requests for a newly scheduled hearing shall be made in the absence of extraordinary circumstances within five (5) days after the scheduled hearing date.

(3) The commissioner or the hearing officer, upon a showing of good cause, may excuse a failure to appear. If the failure to appear is excused, the hearing shall be rescheduled.

Section 8. Consolidation. Cases may be consolidated on the motion of any party, on the hearing officer's own motion, or on the commissioner's own motion, if there exist common parties, common questions of law or fact, or both, or in other appropriate circumstances.

Section 9. Severance. Upon his or her[~~its~~] own motion, or upon motion of any party or intervener, the commissioner or the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

Section 10. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal, before issuance of a recommended order.

(2) The petition shall set forth the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unnecessarily delay the proceeding.

(3) The commissioner or the hearing officer may grant a petition for intervention to the extent and upon the terms determined by [~~as~~] the commissioner or the hearing officer [~~determines~~].

(4) The caption of all cases where intervention is allowed shall reflect the intervention by adding to the caption after the name of the respondent the name of the intervener, followed by the designation "intervener."

Section 11. Service. (1) If filing pleadings or other documents, the filing party or intervenor shall serve a copy on every other party or intervener.

(2) Service upon a party or intervener who has appeared through a representative shall be made only upon the representative.

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail, [~~or~~] by personal delivery, or by email to the email address provided by the party. Service shall be deemed effected at the time of mailing (if by mail), [~~or~~] at the time of personal delivery (if by personal delivery), or at the time the email is received in the email account.

(4) Proof of service shall be accomplished by a written statement of service which sets forth the date and manner of service. The statement shall be filed with the pleading or document.

Section 12. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 13. Response to Motions. Any party or intervener upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 14. Failure to File. Failure to file any pleading pursuant to this administrative regulation when due, may, in the discretion of the commissioner or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 15. Withdrawal of Notice of Hearing. At any stage of a proceeding, a party may withdraw his notice of hearing, subject to the approval of the commissioner.

Section 16. Prehearing Conference. (1) At any time before a hearing, the commissioner or the hearing officer, on his or her own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings, or for any other matter in accordance with KRS 13B.070(1).

(2) The commissioner or the hearing officer may issue a prehearing order in accordance with KRS 13B.070(2). The order shall be served on all parties and shall be a part of the record.

Section 17. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request, or within a shorter or longer time as the commissioner or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with this administrative regulation and filed with the commissioner within the time allotted and shall be a part of the record.

Section 18. Discovery Depositions and Interrogatories. (1) Except by special order of the commissioner or the hearing officer, discovery depositions of parties, interveners, or witnesses, and interrogatories directed to parties, interveners, or witnesses shall not be allowed.

(2) If the commissioner or the hearing officer grants an application to conduct discovery depositions or interrogatories, the order shall set forth appropriate time limits governing the discovery.

Section 19. Failure to Comply with Orders for Discovery. If any party or intervener fails to comply with an order of the commissioner or the hearing officer to permit discovery in accordance with the provisions of this administrative regulation, the commissioner or the hearing officer may issue appropriate orders.

Section 20. Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, ensure that the facts are fully elicited, adjudicate all issues, and avoid delay. The hearing officer, in cases assigned to him, between the time he is designated and the time he issues his decision, subject to the administrative regulations of the department, may:

(1) Administer oaths and affirmations;

(2) Rule upon offers of proof and receive relevant evidence;

(3) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(4) Hold conferences for the settlement or simplification of the issues;

(5) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the commissioner and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated;

(6) Examine witnesses and to introduce into the record documentary or other evidence;

(7) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof; and

(8) Adjourn the hearing as the needs of justice and good administration require.

Section 21. Exhibits. (1) All exhibits offered in evidence shall be marked with a designation identifying the party or intervener by whom the exhibit is offered.

(2) In the absence of objection by another party or intervener, exhibits shall be numbered and admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to this administrative regulation.

(3) Unless the hearing officer finds it impractical, a copy of each exhibit shall be given to the other parties and interveners.

(4) All exhibits offered, but denied admission into evidence, shall be identified as required by subsection (1) of this section and shall be placed in a separate file designed for rejected exhibits.

Section 22. Objections. (1) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. An objection shall not be deemed waived by further participation in the hearing.

(2) If evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 23. Recommendations of Hearing Officer; Exceptions; Final Order. (1) The decision of the hearing officer shall include findings of fact, conclusions of law, and a recommended order to the commissioner disposing of all issues before him in accordance with KRS 13B.110.

(2) Any party may file exceptions to the hearing officer's findings of fact, conclusions of law, and recommended order in accordance with KRS 13B.110(4).

(3) The commissioner shall issue a final order in accordance with KRS 13B.120.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(As Amended at ARRS, November 9, 2021)

501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders.

RELATES TO: KRS 17.550-17.991

STATUTORY AUTHORITY: KRS 17.554(1), 17.564

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(1) requires the Sex Offender Risk Assessment Advisory Board to approve providers to conduct court-ordered comprehensive sex offender presentence evaluations and treatment of sex offenders. ***KRS 17.564(1) authorizes the board to promulgate administrative regulations necessary to carry into effect the purposes of KRS 17.500 to 17.580 and 17.991.*** This administrative regulation establishes approval requirements for providers.

Section 1. Definitions. (1) "Approved provider" is defined by KRS 17.550(3).

(2) "Board" is defined by KRS 17.550(1).

(3) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the factors listed in KRS 17.554(2).

(4) "Corrective action plan" means a plan submitted by the approved provider and accepted by the board or a plan imposed by the board that requires an approved provider to take specific steps to be in compliance with this administrative regulation.

(5) "Sex offender" is defined by KRS 17.550(2).

(6) "Victim" is defined by KRS 17.550(4).

Section 2. Qualifications of Approved Providers. (1) To qualify as an approved provider, [~~an applicant shall,~~] in addition to meeting the requirements of KRS 17.550(3), an applicant shall:

(a)[~~(1)~~] Have completed forty (40) hours of specialty training

provided or approved by the board under Section 7[~~8~~] of this administrative regulation including the following:

1.[~~(a)~~] Characteristics and offense patterns of sex offenders;

2.[~~(b)~~] Treatment modalities used with sex offenders;

3.[~~(c)~~] Legal and ethical issues in the risk assessment of sex offenders;

4.[~~(d)~~] Victim's issues, not to exceed two (2) hours of credit against the total requirement;

5.[~~(e)~~] Issues related to the assessment of juvenile and female sex offenders; and

6.[~~(f)~~] Use of the appropriate actuarial or evaluation instruments;

(b)[~~(2)~~] Be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which the applicant[~~he~~] has professional status; and

(c) 1.[~~(3)~~] Have a minimum of [~~250 hours documented experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of~~]:

a.[~~(a)~~] Sixty (60) hours documented experience conducting sex offender evaluations or completion of a practicum as described in ***subsection (2) of this*** section ***[2(2)[6] of this administrative regulation]***; and

b.[~~(b)~~] 190 hours documented clinical contact conducting sex offender treatment or completion of a practicum as described in ***subsection (2) of this*** section***; [2(2)[6] of this administrative regulation]***[~~.~~]

2. Complete a practicum as described in ***subsection (2) of this*** section ***[2(2) of this administrative regulation]***;

3. Have a current approval or certification as a sex offender treatment provider in another state and be in good standing with that credentialing authority; or

4. Have had an approval or certification as a sex offender treatment provider within the last five (5) years in Kentucky or another state and was in good standing with the credentialing authority during the period of approval or certification.

(2) Practicum requirements.

(a) To successfully complete the practicum, the practicum participant being supervised shall:

1. Have a minimum of 100 hours of face-to-face supervision by the practicum supervisor, which shall include:

a. Case discussion;

b. Review of reading assignments;

c. Skill building; and

d. (i) Supervised actual clinical practice; or

(ii) Review of audio or video recording of actual clinical practice;

2. Obtain a minimum of sixty (60) hours experience conducting sex offender evaluations;

3. Obtain a minimum of 190 hours of supervised clinical experience conducting sex offender treatment; and

4. Participate in the practicum for a minimum of eighteen (18) months.

(b) A practicum supervisor shall:

1. Have a minimum of 2,000 hours of experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:

a. 500 hours conducting sex offender evaluations; and

b. 1,500 hours of clinical contact in sex offender treatment;

2. Be an approved provider in good standing with the board;

3. Submit a written request to conduct a practicum for each participant and receive prior approval by the board to conduct the practicum by:

a. Email to SORAABoard@ky.gov; or

b. Mail to SOTP/SORAA Board, Kentucky State Reformatory, 3001 W. Highway 146, LaGrange, Kentucky 40032***;[;]***

4. Directly observe the practicum participant's clinical practice in person or through video or audio recording;

5. Examine, approve, and sign all comprehensive sex offender presentence evaluations performed by the practicum participant;

6. Give written notice to the board if the practicum supervisor determines that the practicum participant's performance does not comply with the provisions of this administrative regulation, 501 KAR 6:200, or 6:220; and

7. Give written notice to the board if the practicum supervisor stops supervising the practicum prior to its completion.

Section 3. Duties. (1) [~~If an approved provider performs a comprehensive sex offender presentence evaluation for a sex offender, he shall not provide treatment for personal financial gain for the sex offender for six (6) months following that assessment.~~

~~(2)~~] If an approved provider has provided treatment for a sex offender, the approved provider [~~he~~] shall not perform a comprehensive sex offender presentence evaluation [~~for personal financial gain~~] for the sex offender**.** [~~for six (6) months following the treatment.~~]

(2)[~~(3)~~] An approved provider shall:

(a) Submit the first four (4) evaluations prepared after becoming an approved provider for review by the board;

(b) Comply with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which the approved provider[~~he~~] has professional status;

(c) Provide the board with the following contact information:

1. Mailing address that may be included on approved provider list sent to courts;

2. Mailing address to be used by board for contact with approved provider if different than address included on approved provider list sent to courts;

3. Phone number that may be included on approved provider list sent to courts; ***and***

4. Email address, if approved provider has one, that may be included on approved provider list sent to courts;

(d) Provide the board with changes in the contact information listed in paragraph (c) of this subsection within thirty (30) days of a change in information; [~~and~~]

(e) Notify the board within thirty (30) days of the occurrence of:

1. Discontinuance of practice as an approved provider;

2. Being convicted of, pleading guilty to, or entering an Alford plea for a felony;

3. Being convicted of, pleading guilty to, or entering an Alford plea for a misdemeanor against a person;

4. A domestic violence order issued against the approved provider;

5. An interpersonal protective order issued against the approved provider; or

6. Suspension, revocation, or other disciplinary action taken by the licensing or certifying body under which the approved provider has professional mental health treatment status; and

(f)[~~(e)~~] Complete eight (8) hours of continuing education approved or provided by the board by December 31 in each calendar year following the year in which the individual becomes an approved provider.

1. A minimum of six hours of the required continuing education hours shall cover one or more of the areas indicated in Section 2(1)(a)***1-6. [– (f);]***

2. The approved provider shall submit continuing education hours earned each year to the board by January 31 of the year following the year in which the hours were obtained by:

a. Email to SORAABoard@ky.gov; or

b. Mail to SOTP/SORAA Board, Kentucky State Reformatory, 3001 W. Highway 146, LaGrange, Kentucky 40032.

3. The board may grant an extension of twelve (12) [~~six (6)~~] months in which to complete hours of continuing education if:

a. Requested by the approved provider for good cause shown; and

b. A plan to make up uncompleted hours has not been requested or approved by the board for the approved provider for either of the two (2) preceding calendar years.

4.[~~2.~~] To request an extension, an approved provider shall:

a. Submit a plan detailing how the uncompleted hours will be obtained within the next twelve (12)[~~six (6)~~] months;

b. Submit a plan detailing how the next year's eight (8) hours will be obtained within the next calendar year; and

c. State the reasons for the request for extension.

5.[~~3.~~] The extension request shall:

a. Be made in writing;

b. Include the number of hours that need to be completed for the calendar year;

c. Include proof of any hours that were completed; and

d. Be postmarked on or before December 31 of the calendar year for which the hours were required.

(3)[~~(4)~~] An approved provider shall not:

(a) Identify himself or herself as an approved provider as credentialed by the Sex Offender Risk Assessment Advisory Board under the provisions of KRS 17.550 through 17.991 if performing an evaluation that is not of an individual convicted of a felony sex crime as defined by KRS 17.500***; and[~~.~~]***

(b) Refer to an individual being evaluated or treated as a sex offender if the individual does not meet the definition of a sex offender as established in KRS 17.550.

Section 4. Approval Procedures. (1) The board shall approve an applicant as an approved provider if the applicant[~~he~~] meets the applicable qualifications specified in Section 2 of this administrative regulation and is not otherwise disqualified by the provisions of Section 5 of this administrative regulation.

(2) An individual may apply to the board for approval status as an approved provider by submitting:

(a) A written request for approval, which shall include the following:

1. Full name;

2. Business address;

3. Home address;

4. Daytime telephone number;

5. Fax number, if available; and

6. Social Security number;

(b) Documentary evidence of the applicant's[~~his~~] qualifications; and

(c) Evidence that the applicant[~~he~~] has remedied the cause for the denial or revocation, if approval was previously denied or revoked under Section 5 of this administrative regulation.

(3) The board shall determine that an application is incomplete if:

(a) The documentation of qualifications is insufficient to meet the required qualifications in Section 2 of this administrative regulation;

(b) The board is unable to verify the authenticity of the documentation of qualifications; or

(c) Any of the information required in subsection (2) of this section is not submitted.

(4) If the board determines that an application is incomplete, the board shall specify to the applicant additional documentation or information that is required or identify the information that cannot be verified.

(5) The board shall notify the applicant of its intent to approve or deny the application for approval in writing no later than 120[~~ninety (90)~~] days after receiving a complete application for approval.

(6) Unless approval has been revoked in accordance with Section 5 of this administrative regulation, the board shall renew the approval status of an approved provider upon request if:

(a) The approved provider[~~He~~] submits documentation of completion of at least eight (8) hours per year of continuing education provided or approved by the board under Section 7[~~8~~] of this administrative regulation; and

(b) The approved provider continues to meet the requirements of this administrative regulation and KRS Chapter 17 for approved provider status.

(7) The board shall maintain a list of approved providers to be submitted to the Administrative Office of the Courts annually.

Section 5. Denial or Revocation of Approval. (1) The board shall deny, suspend**,** or revoke approval if an applicant or an approved provider has:

(a) [~~Been convicted of or pled guilty to a felony criminal offense or a misdemeanor offense against a person;~~

~~(b) Had a domestic violence protective order issued against him within the previous five (5) years;~~]

~~(c)~~] Failed to meet the qualifications for approval set forth in Section 2 of this administrative regulation;

(b)[~~(d)~~] Failed to be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which the applicant or approved provider[~~he~~] has professional status;

(c)[~~(e)~~]A substance use disorder as defined by KRS 222.005(12)[~~An alcohol or drug abuse problem as defined in KRS 222.005(3)~~];

(d)[~~(f)~~]Falsified any information or documentation, or has concealed a material fact, in the[~~his~~] request for approval;

(e)[~~(g)~~] Failed to implement a corrective action plan imposed by the board in accordance with Section 6[~~7~~] of this administrative regulation;

(f)[~~(h)~~] Three (3) or more evaluations which the board finds are below standard upon review;

(g)[~~(i)~~] Failed to comply with the comprehensive sex offender presentence evaluation procedure established in 501 KAR 6:200;

(h)[~~(j)~~] Shown an inability to conduct an evaluation with reasonable skill;

(i)[~~(k)~~] Accepted a gift or favor from a sex offender being assessed, from the family of the sex offender being assessed, or from their agent;

(j)[~~(l)~~] Provided a gift or favor to a sex offender being assessed, to the family of the sex offender being assessed, or to their agent;

(k)[~~(m)~~] Failed to comply with an order of the board; or

(l)[~~(n)~~] Failed to comply with instructions of the board during an investigation.

(2) The board may deny, suspend, or revoke approval if an applicant or an approved provider has:

(a) Been convicted of or pled guilty to a felony criminal offense or a[~~any~~] misdemeanor criminal offense [~~that is not against a person~~];

(b) Has a current active domestic violence or interpersonal protective order issued against the applicant or approved provider;

(c) Had a domestic violence or interpersonal protective order issued against the applicant or approved provider within the previous three (3) years;

(d)[~~(b)~~] Had a sanction applied against the applicant or approved provider's[~~his~~] mental health professional licensure or certification at any time in the past two (2) years;

(e)[~~(c)~~] Failed to comply with the duties ***established*** ***[~~set forth~~]*** in Section 3 of this administrative regulation;

(f)[~~(d)~~] Less than three (3) evaluations that the board finds are below standard upon review;

(g)[~~(e)~~] Failed to comply with the treatment requirements established in 501 KAR 6:220;

(h)[~~(f)~~] Failed to comply with the evaluation procedure established in 501 KAR 6:200;

(i)[~~(g)~~] Failed to comply with the requirements ***established*** ***[~~set forth~~]*** by the board for the practicum or to successfully complete the practicum, if so required by Section 2 of this administrative regulation;

(j)[~~(h)~~] Identified himself or herself as an approved provider as credentialed by the Sex Offender Risk Assessment Advisory Board under the provisions of KRS 17.550 through 17.991 if performing an evaluation that is not of an individual convicted of a felony sex crime as defined by KRS 17.500; or

(k)[~~(i)~~] Referred to an individual being evaluated or treated as a sex offender if the individual does not meet the definition of sex offender established in KRS 17.550.

(3) If the board intends to deny, suspend or revoke approval, it shall:

(a) Serve a notice of intent to deny, suspend, or revoke approval to the applicant or approved provider; and

(b) Notify the applicant or approved provider of the[~~his~~] hearing [~~rights~~], in accordance with KRS Chapter 13B and KRS 17.560.

(4) An approved provider who has had [~~his~~] approval revoked shall be ineligible to apply to be an approved provider until the second anniversary of the date the[~~his~~] approval was revoked unless the[~~his~~] revocation was for failure to obtain the required eight (8) hours of continuing education and the required hours have been obtained.[

~~Section 6. Practicum Requirements. (1) A practicum required by Section 2 of this administrative regulation shall be conducted by an approved provider who shall:~~

~~(a) Have a minimum of 2000 hours of experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:~~

~~1. 500 hours conducting sex offender evaluations; and~~

~~2. 1,500 hours of clinical contact in sex offender treatment;~~

~~(b) Be an approved provider in good standing with the board;~~

~~(c) Submit a request to conduct a practicum for each participant and be approved by the board to conduct the practicum;~~

~~(d) Directly observe the practicum participant's clinical practice in person or through video or audio tape;~~

~~(e) Examine and approve all comprehensive sex offender presentence evaluations performed by the practicum participant; and~~

~~(f) Give written notice to the board if he determines that the practicum participant's performance does not comply with the provisions of this administrative regulation, 501 KAR 6:200, or 6:220.~~

~~(2) To complete a practicum required by this administrative regulation, the participant shall:~~

~~(a) Have a minimum of four (4) hours of face-to-face contact with the approved provider conducting the practicum each month, which shall include case discussion, review of reading assignments, skill building, and review of audio or video tape of actual clinical practice;~~

~~(b) Obtain a minimum of sixty (60) hours experience conducting sex offender evaluations;~~

~~(c) Obtain a minimum of 190 hours of clinical experience with face-to-face contact conducting sex offender treatment;~~

~~(d) Participate in the practicum for a minimum of six (6) months; and~~

~~(e) Meet the requirements of the practicum within a maximum of eighteen (18) months.~~

~~(3) If an applicant has a portion of the minimum hours required to qualify as an approved provider in Section 2(3) of this administrative regulation, he shall participate in the practicum as described in subsections (1) and (2) of this section and may obtain only the hours needed to meet the minimum qualifications in Section 2(3) of this administrative regulation.~~]

Section 6.[~~Section 7.~~] Monitoring. (1) The board may:

(a) Investigate a formal complaint, verified by affidavit, concerning an approved provider, if the complaint alleges a failure to comply with the provisions of this administrative regulation, 501 KAR 6:200, or 6:220;

(b) Refer a complaint against an approved provider, which relates to an unethical practice or practice which may be outside the approved provider's scope of practice, to the appropriate Kentucky licensure or certification board; and

(c) Investigate and evaluate an approved provider's adherence to the provisions of this administrative regulation, 501 KAR 6:200, or 502 KAR 6:220, on its own initiative.

(2) The board or staff that assists the board may monitor an approved provider by the following activities:

(a) Interviewing a sex offender or victim, if consent is given by the sex offender or victim for the interview;

(b) Reviewing evaluation or treatment records maintained by an approved provider on a sex offender;

(c) Direct observation of the evaluation or treatment of a sex offender; or

(d) Interviewing judicial, correctional, ***or*** law enforcement officials or other individuals that interact with an approved provider in relation to comprehensive sex offender presentence evaluations or treatment of sex offenders.

(3) If an approved provider fails to comply with provisions of this administrative regulation, 501 KAR 6:200, or 6:220, the board shall notify him in writing of its determination and may:

(a) Require the approved provider to submit a corrective action plan for approval by the board;

(b) Impose a corrective action plan; or

(c) Revoke approval in accordance with Section 5 of this administrative regulation.

(4) If the board requires an approved provider to comply with a corrective action plan, it shall review plan compliance within 120[~~ninety (90)~~] days.

Section 7.[~~Section 8.~~] Approval of Specialty Training and Continuing Education. (1) Specialty training.

(a) Specialty training, as required in Section 2 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance.

(b) An applicant seeking approval of a specialty training course shall submit to the board the following:

1. A certificate of attendance which shall include the number of hours of training received; or

2. a. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and

b. An agenda from the training seminar that describes topics and length of time spent on each topic.

(c) The board may require the applicant to provide course materials from the training seminar or additional information, if it is unable to adequately determine the nature or relevance of the training provided at the seminar from the materials submitted under ***paragraph (b) of this*** subsection ***[(1)(b) of this section]***.

(2) Continuing education.

(a) Continuing education, as required in Section 3 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance.

(b) An approved provider seeking approval of continuing education hours shall submit to the board the following:

1. A certificate of attendance that shall include the number of hours of education received; or

2. a. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and

b. An agenda from the seminar, which describes topics and length of time spent on each topic.

(c) The board may require the applicant to provide course materials from the seminar or additional information, if it is unable to adequately determine the nature or relevance of training provided at the seminar from the materials submitted under ***paragraph (b) of this*** subsection ***[(1)(b) of this section]***.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(As Amended at ARRS, November 9, 2021)

501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure.

RELATES TO: KRS 17.550-17.991

STATUTORY AUTHORITY: KRS 17.554(2), 17.564

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(2) ***requires*** ***[~~authorizes~~]*** the Sex Offender Risk Assessment Advisory Board to establish a comprehensive sex offender presentence evaluation procedure for court-ordered evaluations of sex offenders. KRS 17.564(1) authorizes the board to promulgate administrative regulations necessary to carry into effect the purposes of KRS 17.500 to 17.580 and 17.991. This administrative regulation establishes the evaluation procedure to ensure the quality of court-order comprehensive sex offender presentence evaluations.

Section 1. Definitions. (1) "Amenability to treatment" means the offender is free from intellectual disability[~~organic~~] or psychological disturbance[~~impairment~~] that would prevent the offender from engaging meaningfully in sex offender treatment and he is[~~,~~] at least minimally able[~~, receptive~~] to participate in the treatment

process.

(2) "Appropriate setting" means a secure institutional setting or a community-based setting.

(3) "Approved provider" is defined by KRS 17.550(3).

(4) "Board" is defined by KRS 17.550(1).

(5) "Clinically adjusted" means a change in the risk level recommendation based on compelling[~~facts or~~] evidence which indicates[~~indicate~~] to an approved provider that the probability of recidivism ranges are inappropriate for a sex offender, such as a risk factor being in an acute phase of severity.

(6) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the four (4) areas of assessment listed in KRS 17.554(2).

(7) "Evidence based standards of care" means standards and practices that:

(a) Are based on the best available clinical scientific research or evidence for treatment of sex offenders;

(b) Take into account the offender's current clinical state and factors that may influence treatment gain; and

(c) Are generally accepted by reasonable providers within the sex offender treatment field.

(8)[~~(7)~~] "Nature of required sex offender treatment" means the treatment management issues including recommendations for the focus of treatment, special treatment considerations, further evaluation, and restrictions to minimize the risk of recidivism.

(9) "Responsivity factors" means factors that impact an offender's ability to begin, engage in, and complete treatment and can interfere with the ability of the offender to respond to treatment.

(10)[~~(8)~~] "Risk of recommitting a sex crime" means a designation of high or not high risk based on the finding of the instrument used or other clinically relevant data that suggests sexual reoffense is more likely than not.

(11)[~~(9)~~] "Sex offender" is defined by KRS 17.550(2).

(12) "Stages of change" means the change process occurs gradually over time and includes levels or stages as follows:

(a) Precontemplation, in which the individual does not intend to make a change in the behavior;

(b) Contemplation, in which the individual has an awareness of the problem and may consider the pluses and minuses of change;

(c) Preparation, in which the individual intends to take action within one (1) month and may make small behavioral changes;

(d) Action, in which the individual modifies the problem behavior for one (1) to six (6) months; and

(e) Maintenance, in which the behavior change extends from six (6) months and the individual works to prevent relapse.

Section 2. Comprehensive Sex Offender Presentence Evaluation Procedures. (1)(a) An approved provider shall conduct a comprehensive mental health evaluation following evidence based[~~the professional~~] standards of care.[~~in the area of his certification or licensure.~~]

(b) The evaluation shall include a face-to-face interview and a review of collateral information. The face-to-face interview may be conducted by videoconferencing if it allows the approved provider to see the offender at all times during the interview.

(c) If the results of initial mental health screening procedure dictate, additional appropriate psychological testing addressing cognitive functioning, mental illness, and severe characterological impairment shall be employed as circumstances allow.

(2) Risk of recommitting a sex crime shall be determined in the following manner:

(a) If applicable, an actuarial instrument shall be used which is appropriate to the sex offender. An actuarial instrument shall be appropriate for use if:

1. The instrument's developmental sample or subsequent study samples contained individuals with characteristics similar to the offender being evaluated; and

2. The instrument's reliability and validity has been demonstrated through research. The results of the instrument may be clinically adjusted at the discretion of the approved provider.

(b) If an actuarial instrument is not appropriate, an empirically guided approach shall be used. An empirically-guided approach shall mean that the approved provider shall consider risk factors that research has demonstrated to be associated with risk for recidivism.

(3) The threat to public safety shall be determined in the following manner:

(a) The approved provider shall consider the following domains in assessing the sex offender's immediate threat to public safety and in arriving at a recommendation regarding an appropriate treatment setting:

1. The sex offender's amenability to treatment;

2. The degree of threat of harm or actual force employed in the index offense and in prior offenses;

3. The nature and duration of the offending;

4. The sex offender's psychological adjustment;

5. The sex offender's social and occupational adjustment; and

6. The sex offender's statements or indications of harm directed to another.

(b) The approved provider shall make a recommendation as to the appropriate setting in which treatment, if indicated, should be provided for the sex offender.

(4) [~~To assess amenability,~~] The approved provider shall assess[~~address~~] the following factors for amenability:

(a)[~~.~~] The sex offender shall[~~:~~

~~(a)~~]Not exhibit symptoms of a psychological disturbance that may significantly inhibit treatment participation;

(b) The sex offender shall exhibit a level of intellectual functioning sufficient to complete the task assigned in the treatment program to which he will be referred;

(c) Whether the sex offender will receive a benefit from treatment designed for sex offenders with intellectual developmental disorder, if the sex offender has an intellectual developmental disorder;

(d) Whether the sex offender acknowledges[~~Acknowledge~~] involvement in the sex offense for which he or she is convicted[~~charged~~];

(e) Whether the sex offender considers[~~(d) Consider~~] his or her involvement in the sex offense to be a problematic behavior that he or she does not want to repeat; and

(f) The level of acknowledgment and ***current stage of [~~desire to~~]*** change expressed by the sex offender[~~(e) Verbalize a willingness to enter and fully participate in treatment~~].

(5) In assessing the nature of required sex offender treatment, the approved provider shall address management issues including:

(a) Recommendations for the focus of treatment;

(b) Special treatment considerations, including:

1. Recommendations to address identified responsivity factors; and

2. Other issues that impact the offender's ability to engage in treatment;

(c) Further evaluation; and

(d) Restrictions to minimize the risk of recidivism.

Section 3. Evaluation Report. (1) An approved provider shall prepare a comprehensive sex offender presentence evaluation report to the court in the form of a bifurcated document.

(2) The first section of the report shall consist of information prepared specifically for the court and shall contain the following headings:

(a) Identifying information including:

1. Name;

2. Social Security number;

3. Date of birth;

4. Age; and

5. Indictment number or county;

(b) Referral information, including reason for referral, informed consent, and procedures;

(c) Information sources; and

(d) Summary, conclusions, and recommendations.

(3) The second section shall include the following information from which the summary and conclusions were reached:

(a) Criminal justice information, including index offense, prior sex offense, or other legal history;

(b) Psychosocial history including:

1. Family of origin;

2. Education;
3. Military;
4. Occupational;
5. Financial;
6. Sexual;
7. Relationship;
8. Mental health; and
9. Medical;
(c) Behavioral observations and mental status;
(d) Standardized assessment or psychological testing;
(e) Diagnosis impressions;
(f) Treatment considerations; and
(g) The statutory factors found in KRS 17.554(2).
(4) The report shall be entitled "Comprehensive Sex Offender Presentence Evaluation."
(5) An approved provider shall place his or her signature at the end of the recommendation report if the approved provider[~~he~~]:
(a) Conducted the comprehensive sex offender presentence evaluation; or
(b) Reviewed and approved the evaluation.
(6) If the approved provider previously provided treatment to the sex offender, he shall not perform a sex offender presentence evaluation for the offender.

Section 4. Recordkeeping. (1) An approved provider shall maintain the evaluation records for the period of time required for the approved provider to maintain patient files by the licensing or certifying body under which the approved provider has professional status[~~:~~
~~(a) Transmit all comprehensive sex offender presentence evaluation information to the board; or~~
~~(b) Maintain the information for a period of fifteen (15) years~~].
(2) The original or a copy of all comprehensive sex offender presentence evaluation information shall be provided to the board[~~:~~
~~(a)~~] upon request[~~; or~~
~~(b) At the death of the approved provider~~].

The Sex Offender Risk Assessment Advisory Board approved this administrative regulation at its meeting on March 8, 2021 prior to its filing with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2021)

501 KAR 6:250. Graduated sanctions for technical violations of probation and compliance incentives system.

RELATES TO: KRS 196.030, 439.250, 439.3105-439.3108, 439.551, 439.553, 446.010
STATUTORY AUTHORITY: KRS 196.035, 439.3106, 439.3107, 439.3108, 439.470, 439.551, 439.553
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 439.3106, 439.3107, 439.3108, 439.470, and 439.551 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 and to establish a system of graduated sanctions for probation violations. This administrative regulation establishes graduated sanctions for responding to violations of probation.

Section 1. Definitions. (1) "Conditions of supervision" or "conditions of probation" means general and specific directives given to an offender placed on probation by the sentencing judge or the Division of Probation and Parole.
(2) **"**Demonstrated pattern of failure to comply with conditions of supervision**"** means that the offender has a major violation of the same or similar condition of supervision more than three (3) times over the course of the offender's supervision.
(3) "Division" means the Kentucky Department of Corrections Division of Probation and Parole.
(4)[~~(3)~~] "Graduated sanctions" is defined ***by*** ***[in]*** KRS 446.010***(20)***.
(5)[~~(4)~~] "High risk behavior" means an action or [~~a lifestyle~~] activity that places a person at risk of violating a condition of supervision or committing a crime [~~suffering a particular harmful condition~~].
(6)[~~(5)~~] "Offender" means a person placed under the supervision of the division by a court with jurisdiction over the sentence.
(7)[~~(6)~~] "Officer" or "probation and parole officer" means a person employed by the division who supervises, counsels, and directs an offender on probation.
(8)[~~(7)~~] "Releasing authority" means the court with jurisdiction over the sentence that granted probation.
(9)[~~(8)~~] "Revocation" means an offender having his probation ended and being incarcerated as a result of a hearing for violations of conditions of supervision.
(10)[~~(9)~~] "Risk and needs assessment" is defined ***by*** ***[in]*** KRS 446.010(38).
(11) "Probation and parole violation matrix" means the table ***in Section 6 of [within]*** this administrative regulation that addresses sanction decisions.

Section 2. Informal Response and Mandatory Return to Court. (1) [~~Application of Graduated Sanctions. If the sentencing court orders the offender to be subject to graduated sanctions as part of the conditions of his probation, then to the extent that this administration regulation is not in conflict with the orders of the court, graduated sanctions shall be applied as follows:~~
~~(1) The officer shall consider the:~~
~~(a) Offender's assessed risk and needs level;~~
~~(b) Offender's adjustment on supervision;~~
~~(c) Severity of the current violation;~~
~~(d) Seriousness of the offender's previous criminal record;~~
~~(e) Number and severity of any previous supervision violations; and~~
~~(f) Extent to which graduated sanctions were imposed for previous violations.~~
~~(2) The officer shall review the circumstances of the offender and the violations at issue to determine if the violation behavior is appropriately responded to with graduated sanctions.~~
~~(a)~~] Informal response.
(a) Unless otherwise ordered by the court[~~In lieu of graduated sanctions~~], the officer may resolve the following minor violations through an informal case management strategy:
1. Missing scheduled report day;
2. Traffic offense without arrest;
3. Failure to seek employment;
4. Failure to enroll or maintain school attendance; and
5. Failure to notify officer prior to change of address.
(b) The officer shall compile a violation report documenting the reason and the informal response.
(c) The officer shall meet with the offender to discuss and sign the violation response.
(2)[~~(b)~~] Violations which shall be returned to the releasing authority.
(a) Graduated sanctions shall not be used by the officer and violation documentation shall be submitted to the releasing authority for violation proceedings up to and including revocation for the following violations:
1. Absconding supervision;
2. New felony conviction;
3. New misdemeanor conviction of assault;
4. New misdemeanor conviction of violation of emergency protective***,*** ***[or]*** domestic violence***, or interpersonal protective*** order;
5. New misdemeanor conviction for sexual offense;
6. New misdemeanor conviction for driving under the influence;

7. Possession or use of a firearm;

8. Failure to complete sex offender treatment program; ***[or]***

9. Demonstrated pattern of failure to comply with conditions of supervision; or

10. Violations of an assaultive nature.

(b) The officer shall provide the violation documentation to a supervisor and discuss the case prior to submitting the violation documentation to the releasing authority.

Section 3. Review for Graduated Sanctions and Use of the Matrix. If the violation is not handled by an informal response as established in Section 2 of this administrative regulation and the sentencing court orders the offender to be subject to graduated sanctions as part of the conditions of his probation, then to the extent that this administration regulation is not in conflict with the orders of the court, graduated sanctions shall be applied as follows:

(1) The officer shall consider the:

(a) Offender's assessed risk and needs level;

(b) Offender's adjustment on supervision;

(c) Severity of the current violation;

(d) Seriousness of the offender's previous criminal record;

(e) Number and severity of any previous supervision violations;

(f) Extent to which graduated sanctions were imposed for previous violations; and

(g) Any other factors related to public safety.

(2)[~~(3) If the officer determines that an informal response and graduated sanctions are not appropriate, then the officer shall report the violation to the releasing authority.~~

~~(4) If a determination is made by the officer to proceed with graduated sanctions~~] The officer shall:

(a) Determine whether the violation is a major or minor violation in accordance with Sections 4[3] and 5[4] of this administrative regulation; and

(b) Review the probation and parole violation matrix in Section 6[~~5~~] of this administrative regulation to impose sanctions or determine other appropriate action as directed in this administrative regulation.

(3)[(~~5~~)] The officer shall consider the following when reviewing the violation behavior with the matrix:[~~.~~]

(a) If there are multiple violations, the officer shall use the most serious violation for the review for sanctions.

(b) If the possible sanctions in a response range have been exhausted on previous violations, the officer may use sanctions in the next highest response range.

(c) If the offender has violated conditions of supervision imposed in more than one ***(1)*** case (i.e., multiple cases from a single jurisdiction, cases from multiple jurisdictions, or on supervision for probation and parole or other form of community supervision), the officer shall determine the criminal conviction in the case for which the graduated sanctions will be imposed. A graduated sanction shall not be imposed on more than one case at a time and cases shall not be sanctioned separately for individual violations arising from the same series of violations.

(4)[(~~6~~)] In order to determine the range of sanctions that may be imposed, the officer shall:

(a) Determine the offender's risk and needs level based on the offender's most recent risk and needs assessment; and

(b) Use the probation and parole violation matrix in Section 6[~~5~~] of this administrative regulation to cross reference the violation behavior category as determined in subsection (3)[(~~5~~)] of this section with the offender's risk and needs level to determine the sanctions available in the indicated response range.

(5) If the officer recommends a graduated sanction or discretionary detention, the officer shall:

(a) Discuss with a supervisor an appropriate graduated sanction for the violation***[, if necessary,]*** prior to completing the violation report;

(b) Complete and provide the violation report to the supervisor including information about compliance with the probation and parole matrix in Section ***6 [(6)]*** of this administrative regulation;

(c) State the reasons for a recommendation of an alternative response outside of the responses outlined in the probation and parole matrix, if the officer makes an alternative response recommendation. The reasons may include:

1. The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends imposing sanctions from a higher response range;

2. The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends revocation;

3. Interventions not included in the matrix are appropriate for the circumstances of the violation; or

4. The officer determines that the offender has failed to comply with prior graduated sanctions imposed and further implementation of graduated sanctions would be futile;

(d) Obtain approval from a supervisor for the violation response prior to imposing the sanction; and

(e) Document the approval, denial, or resubmission of an alternative graduated sanction action in the offender management system. [

~~(7) If the officer determines that the indicated response range or a lower response range contains an appropriate sanction for the circumstances of the violation, then the officer shall impose the sanction.~~

~~(8) The officer shall seek approval from the supervisor, if the officer determines that:~~

~~(a) More than two sanctions from response range 3 or higher are appropriate for the circumstances of the violation;~~

~~(b) The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends imposing sanctions from a higher response range;~~

~~(c) The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends revocation; or~~

~~(d) Interventions not included in the matrix are appropriate for the circumstances of the violation.~~]

(6)[(~~9~~)] Upon receiving a recommendation for graduated sanctions**,** [~~which requires approval before being implemented~~]***[:]***[

~~(a)~~] the [~~district~~] supervisor [~~or designee~~] shall review the recommendation and [~~may~~]:

(a)[1.] Approve the recommendation; or

(b)[2.] Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.[~~; and~~

~~(b) The officer shall document the action in the offender management system.~~

~~(10) If the officer determines that the offender has failed to comply with graduated sanctions and further implementation of graduated sanctions would be futile, the officer shall seek approval from the district supervisor or designee to submit violation documentation to the releasing authority for violation proceedings.~~

~~(11) Upon receiving a recommendation to submit violation documentation to the releasing authority for violation proceedings~~:

~~(a) The district supervisor or designee shall review the recommendation and:~~

~~1. Approve the recommendation; or~~

~~2. Reject the recommendation and refer the violation back to the officer for alternative sanctions; and~~

~~(b) The officer shall document the action in the offender management system.~~]

Section 4.[~~Section 3.~~] Minor Violations. Minor violations shall include the following:

(1) Failure to report a citation or arrest;

(2) Failure to report;

(3) Being in an establishment where alcohol is sold as a primary commodity;

(4) Traffic offenses unless arrested;

(5) Failure to pay financial obligations as ordered by the releasing authority;

(6) Failure to seek employment;

(7) Failure to enroll or maintain school attendance;

(8) Falsifying a release report;

(9) Violation of other special conditions unless ordered by

releasing authority;
(10) Association with convicted felon;
(11) Violation of travel restrictions;
(12) Visiting a correctional facility without prior approval;
(13) Issuance of an emergency protective order***, [or]*** domestic violence order***, or interpersonal protective order***;
(14) Violation of curfew;
(15) First or second positive drug or alcohol test;
(16) Failure to comply with re-entry programming;
(17) Failure to complete community service; and
(18) Other violations of similar magnitude.

Section 5.[~~Section 4.~~] Major Violations. Major violations shall include the following:
(1) Misdemeanor conviction that does not require submission to the releasing authority pursuant to Section 2(2)(a[~~b~~]) of this administrative regulation;
(2) Failure to complete[~~comply with~~] treatment;
(3) Failure to complete halfway house program;
(4)[~~(3)~~] Multiple minor violations within ninety (90) days;
(5)[~~(4)~~] Multiple positive drug or alcohol tests or high risk behavior;
(6)[~~(5)~~] Refusal to submit to an alcohol or drug test;
(7) Altering or attempting to alter the results of a drug screen;
(8)[~~(6)~~] Harassing[~~Intimidating~~] or threatening a probation and parole officer;
(9)[~~(7)~~] Possession or use of a weapon other than a firearm by an offender;
(10)[~~(8)~~] Failure to comply with sex offender registry;
(11)[~~(9)~~] Over three (3) months behind on restitution;
(12)[~~(10)~~] Violation of a special condition ordered by the releasing authority;
(13)[~~(11)~~] Violation of travel restrictions to another state;
(14)[~~(12)~~] Violation of curfew with electronic monitoring device;
(15)[~~(13)~~] Change of residence without officer's permission;
(16)[~~(14)~~] Failure to notify probation and parole officer about address change;
(17)[~~(15)~~] Failure to participate in a required program or service; and
(18)[~~(16)~~] Other violations of similar magnitude.

Section 6[~~5~~]. Probation and Parole Violation Matrix. The following matrix shall be used to determine allowable graduated sanctions for probation violations:

PROBATION AND PAROLE VIOLATION MATRIX					
	OFFENDER RISK LEVEL				
VIOLATION	Very High	High	Moderate	Low	Admin
1st Minor	2	1	1	1	1
2nd Minor	3	2	2	2	1
3rd (or more) Minor	4	3	3	2	2
1st Major	4	3	3	2	2
2nd Major	4	3	3		
3rd (or more) Major	4	4	4		

Response Range 1	Response Range 2	Response Range 3	Response Range 4
	Any response or combination of responses in range 1 or:	Any response or combination of responses in ranges 1-2 or:	Any response or combination of responses in ranges 1-3 or:
Verbal or Written Warning Evidence Based Programming Coaching by supervisor & officer Increase[~~Increased~~] Reporting Increase Frequency of Drug Testing Referral to programming approved by the Department Up to 3 days Discretionary Detention with Supervisor Approval Increase Level of Supervision Loss of Travel or Other Privileges Curfew up to 30 days Referral to the Social Service Clinician for substance abuse assessment and treatment Referral to Community Service Agency for Counseling or Treatment	Curfew up to 60 days Community Service 20-30 hours Electronic Monitoring Increased Treatment Up To Residential Up to 5 days Discretionary Detention [~~up to 10 days~~] with Supervisor Approval	Curfew up to 120 days Community Service 30-40 hours Halfway House 6-10 days Discretionary Detention with Supervisor Approval Jail Time in excess of 10 days [~~up to 30 days~~] (requires hearing with releasing authority)	Curfew up to 180 days Community Service 40-50 hours [~~Jail Time up to 60 days (requires hearing with releasing authority)~~] Additional jail time at the discretion of the releasing authority Request Revocation

Community Service up to 8 hours			
*Upon consideration of the totality of the circumstances and with supervisory approval, the officer may direct the offender into appropriate interventions not included in the violation matrix or seek to impose a high lever sanction, up to and including revocation. Discretionary detention for probationers shall be implemented pursuant to this administrative regulation to the extent that it is not in conflict with the orders of the court.			

Section 7.[~~Section 6.~~] Documentation and Notice of Graduated Sanctions. (1) Prior to imposing the graduated sanctions, the officer shall prepare a probation violation report with graduated sanctions. The report shall include:

(a) A description of the violation behavior;

(b) A description of the sanctions which will be imposed; and

(c) Notice of the offender's right to:

1. A violation hearing before the court;

2. Representation by an attorney at the hearing; and

3. Have an attorney appointed for him at state expense if he cannot afford one.

(2) The officer shall:

(a) Provide a copy of the probation graduated sanctions violation report to the offender prior to the imposition of sanctions;

(b) Ask the offender if he can read the probation graduated sanctions violation report. If the offender states that he cannot read, then the officer shall read the report to the offender; and

(c) Ask the offender if he can understand English. If the offender informs the officer that he cannot understand English, the officer shall provide the offender with a probation graduated sanctions violation report in the offender's language or a language interpreter, if available. If the report cannot be provided in the offender's language and a language interpreter is not available, then the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctions[~~sanctioning~~] process.

(3) If the offender indicates to the officer that he does not understand his rights as stated in the probation graduated sanctions violation report, the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctions[~~sanctioning~~] process.

(4) If the offender chooses to waive his right to a violation hearing and elects to participate in the graduated sanctions[~~sanctioning~~] process, then:

(a) The offender shall note his choice and sign the probation graduated sanctions violation report;

(b) The officer shall sign the probation graduated sanctions violation report;

(c) The district supervisor or designee shall sign the probation graduated sanctions violation report;

(d) The officer shall provide the probation graduated sanctions violation report to the releasing authority; and

(e) The officer shall document the actions taken in the offender management system.

(5) If the offender contests the graduated sanction to be imposed for minor violations, the officer shall report the contest to the supervisor. The supervisor shall deny the offender's contest or grant an alternative sanction.

(6) If the offender chooses not to waive his right to a violation hearing, the officer shall report the violation to the releasing authority for proceedings.

Section 8.[~~Section 7.~~] Discretionary Detention [~~Up to Ten Days~~].

(1) Discretionary Detention Up to Ten (10) Days.

(a) If the officer recommends discretionary detention as a graduated sanction, the officer shall review the offender's record to determine if the recommended days of detention will cause the offender to serve more than sixty[~~thirty~~] days in discretionary detention during the calendar year as limited by KRS 439.3108.

(b)[~~(2)~~] The officer shall determine a period of detention, not to exceed ten days in compliance with the probation and parole matrix in Section 6 of this administrative regulation.

(c)[~~(3)~~] The officer shall seek approval from a[~~the district~~] supervisor for the detention. If the officer takes the offender into custody, the officer shall:

1.[~~(a)~~] Obtain approval from a[~~the District~~] supervisor within four (4) hours;

2.[~~(b)~~] If the detention is not approved, follow directives of a[~~the District~~] supervisor;

3.[~~(c)~~] Continue the detention if other legal process permits; or

4.[~~(d)~~] Release the offender from detention.

(d)[~~(4)~~] Upon receiving a recommendation for detention***[:***

1.][~~(a)~~] the [~~district~~] supervisor shall:

1.[a.][~~1.~~] Approve the recommendation; or

2.[b.][~~2.~~] Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation***[~~; and~~]***

(e)[~~(b)~~] The officer shall document the action in the offender management system.

(2) Discretionary detention for more than ten (10) days.

(a) If the officer recommends discretionary detention as a graduated sanction in excess of ten (10) consecutive days:

1. Discuss the detention days in excess of ten (10) days with a supervisor;

2. Complete a violation report with reasons for the additional period of detention;

3. Submit the violation report to a supervisor for approval;

4. Submit the violation report to the releasing authority with the reason for the additional detention days, if approval is received from a supervisor; and

5. Document the actions in the offender management system.

(b) Upon receiving a recommendation for detention the supervisor shall:

1. Approve the recommendation; or

2. Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.

(3)[~~(5)~~] The officer shall determine if the offender is employed and whether it is feasible for the offender to serve the approved detention at times that the offender is not scheduled to work.

(4)[~~(6)~~] The officer shall document the violation and provide notice to the offender and the releasing authority pursuant to the provisions of Section 7[~~6~~] of this administrative regulation.

Section 9. After consideration of the totality of the circumstances, if the officer determines that graduated sanctions are not appropriate for the violation and seeks to return the offender to the releasing authority for violation proceedings, the officer shall discuss the case with a supervisor.

(1) The supervisor and officer shall review the following factors:

(a) The offender has demonstrated an inability to comply with supervision;

(b) Graduated sanctions have been previously imposed or the serious nature of the violation merits return to the releasing authority;

(c) The offender refuses graduated sanctions;

(d) All resources available in the community have been exhausted; and

(e) The offender poses a safety risk to himself or the community.

(2) The case review shall be documented in the offender management system by the supervisor, including why graduated sanctions were not appropriate and the factors used to make the recommendation to the releasing authority.

Section 10.[~~Section 8.~~] Compliance Incentives. An officer may use proportionate incentives for compliance with conditions of supervision including:

(1) Reduced reporting requirements;

(2) Lower levels of supervision as indicated by the offender's risk and needs assessment;

(3) Removal of supervision conditions, for example home

detention or curfew;
(4) Eligibility for early termination of probation;
(5) Awarding certificates of achievement;
(6) Deferring a monthly supervision fee payment;
(7) Asking the supervised individual to be a mentor to others; or
(8) Other similar incentives.

This administrative regulation has been through the process advised for consultation with the Supreme Court prior to its filing with the Legislative Research Commission as required by KRS 439.551, 13A.120(3), and 13A.220(6)(a).

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2021)

501 KAR 7:130. Prisoner programs; services.

RELATES TO: KRS 441.055, 441.125, 532.100
STATUTORY AUTHORITY: KRS 196.035, KRS 441.055, 532.100***(5)[(4)]***(d)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 ***authorizes [~~requires~~]*** the secretary to promulgate administrative regulations he or she deems necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet, KRS 532.100***(5)[(4)]***(d) requires the Department of Corrections to promulgate administrative regulations establishing required programs for a jail that houses state inmates under ***KRS 532.100(5) [~~this subsection~~]***. KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures for prisoner programs and services.

Section 1. Programs. (1) Written policy and procedure shall provide that prisoner programs and services shall be available and include social services, religious services, recreation and leisure time activities, and library services.
(2) Prisoners who perform work as authorized by KRS 441.125 may receive rewards in the form of sentence reductions or other privileges, if granted by the proper authority.
(3) Written policy and procedures shall establish rules[~~guidelines~~] for prisoners as to acceptable means of transportation to and from work, school, and programs.
(4) There shall be written procedures for the verification and monitoring of the prisoner's employment status. A written schedule shall be maintained for program release to include time of departure, destination, telephone number and address of program location, and time of return. Periodic monitoring of a prisoner's adherence to the approved schedule shall occur.
(5) Written procedures shall specify the monetary amount of reimbursement for room and board at the center by the prisoner and the process by which these fees shall be collected and used. Accurate records of receipts shall be maintained.

Section 2. Religious Programs. Written policy and procedure shall ensure the constitutional rights of prisoners to voluntarily practice their own religious activities, subject to those limitations necessary to maintain the order and security of the center.

Section 3. Recreation Programs. Written policy and procedure shall provide all prisoners with the opportunity to participate in an average of one (1) hour of recreational activity per day. Recreation programs may include board games, arts and crafts, radio and television, or other activities designed to relieve idleness and boredom.

Section 4. Volunteers. The policy and procedure manual shall establish rules[~~guidelines~~] for the selection and use of volunteers in the center.

Section 5. Prisoner Programs and Services. (1) On-the-job training (OJT) work programs. State prisoners shall be provided the opportunity to participate in OJT work programs in accordance with KRS 441.125. State inmates who have an approved custody level shall be allowed to work on community service projects outside the jail if authorized by the jailer.
(2) Education programs. State prisoners shall be provided the opportunity to attend adult basic education programs or to pursue a general educational development (GED) diploma.
(3) Substance abuse programs. State prisoners shall be provided the opportunity to participate in substance abuse programs including Alcoholics Anonymous (AA) or Narcotics Anonymous (NA). State prisoners who have been determined to have substance abuse problems shall be referred to outpatient treatment available in the community. State prisoners, who are in need of extensive substance abuse treatment and have been referred by the Division of Addiction Services[~~Mental Health~~], shall be allowed to participate in the substance abuse program (SAP), if space is available.
(4) Evidenced based programs. Eligible state prisoners may be provided the opportunity to participate in evidence based programming offered within the jail with the approval of department staff. State prisoners who complete evidence based programming may be eligible to receive program completion credit, in accordance with CPP 15.4 ***incorporated by reference in 501 KAR 6:020***.

Section 6. Required Documents. The jail may provide required documents to prisoners in an electronic format.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2021)

501 KAR 7:140. Prisoner rights.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 196.035, 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures to ensure the rights of prisoners in restricted custody centers.

Section 1. Policy and Procedure. (1) Each center shall have a written statement of prisoner rights which shall address:
(a) Access to court;
(b) Access to attorney;
(c) Mail;
(d) Telephone;
(e) Grievance procedure;

(f) Search and seizure;
(g) Disciplinary procedure;(h) Racial segregation;
(i) Medical care;
(j) Counseling, if available; and
(k) Religion.

(2) The statement of prisoner rights shall be made available to all inmates being assigned to general housing units. The statement of prisoner rights may be posted in a conspicuous place, provided in hard-copy format, or provided through close-circuit cable television ***or another electronic format***.

(3) The jailer shall not prohibit a prisoner's right of access to the judicial process.

(4) The jailer shall ensure the right of each prisoner to have confidential access to his attorney and his authorized representative. Confidential prisoner access to the prisoner's attorney through unmonitored phone lines in non-contact visitation areas shall be permitted.

(5) The jailer shall have a written policy and procedure that defines the center's visitation rules, which shall include:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend;

(b) At least one (1) visit per week per prisoner shall be allowed except if a prisoner has been assessed a disciplinary penalty for an infraction of rules governing visitation;

(c) A visit shall not be less than fifteen (15) minutes;

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit; and

(e) Children, if accompanied by an adult, shall be permitted to visit a prisoner.

(6) Attorneys, clergy, and health care staff shall be permitted to visit a prisoner at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(7) Each visitor shall register and show proper photo identification before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (5) of this section or established in subsection (6) of this section.

(8) A prisoner shall not be restricted in regard to whom he may have as a visitor, unless the jailer determines to exclude the visitor on the basis of one (1) or more of the following conditions:

(a) The visitor:
1. Represents a clear and present danger to security;
2. Has a past history of disruptive conduct at the center;
3. Is under the influence of alcohol or drugs;
4. Refuses to submit to a search; or
5. Refuses to show proper identification; or

(b) The prisoner refuses the visit.

(9) Except for visitors pursuant to subsection (6) of this section, jail personnel may monitor and record visitor and prisoner conversation for security reasons. Notification shall be posted in a conspicuous location in the visiting areas.

Section 2. Mail. (1) The jailer shall have a written policy and procedure for receiving and sending mail that:

(a) Protects prisoners' personal rights; and

(b) Provides for security practices consistent with the operation of the center.

(2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate any state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. The jailer may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer discretion to grant the privilege.

(3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner. After being opened and inspected in the presence of the prisoner, mail received from the court, an attorney of record, or a public official may be provided to the prisoner via an electronic copy through a secure, personal account.

(4) Measures to prevent receipt of prisoner mail containing intoxicants, including fabricated legal mail shall be permitted.

Section 3. Telephone. (1) Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.

(2) If calls are monitored, the prisoner shall be notified.

(3) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) Each prisoner shall be:

(a) Granted the right to practice his religion within limits necessary to maintain institutional order and security; and

(b) Afforded an opportunity to participate in religious services and receive religious counseling within the center.

(2) A prisoner shall not be required to attend or participate in any religious service or discussion.

Section 5. Access to Programs. The jailer shall ensure each prisoner equal access to programs and services, if the security and order of the center are not jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written prisoner grievance procedure. The procedures shall include provisions for:

(1) A response to each written grievance within ten (10) days;
(2) Equal access for each prisoner;
(3) A guarantee against reprisal; and
(4) Resolution[~~Resolving~~] of legitimate complaints.

Section 7. Disciplinary Rights. Each center shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care.501 KAR 7:140. Prisoner rights.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2021)

501 KAR 7:150. Training.

RELATES TO: KRS 441.045, 441.055, 441.115
STATUTORY AUTHORITY: KRS 196.035, 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners and KRS 441.115 sets requirements to obtain training allowances. This administrative regulation establishes minimum training requirements for jail personnel.

Section 1. Information System. A jail shall maintain cumulative records on the types and hours of training completed annually by jail personnel. The records shall be maintained in a manner so that all of the records for a specific jail employee may be readily retrieved and shall be entered into the department training records management system.

(1) If the training is conducted by the department, the

department shall enter and maintain records of the training for the jail personnel in the department's training records management system.

(2) If the training is conducted by someone other than the department, jail personnel who have been trained to enter information into the department training records management system shall enter the training information. Training information shall be entered within ten (10) days of the training being completed. A jail employee shall have access to his individual record.

Section 2. Curriculum. (1) Jail personnel shall receive a minimum of sixteen (16) hours annual in-service training. The training shall be provided by the department or other instruction approved by the jailer.

(2) The training shall include:

(a) A minimum of four (4) hours of mental health training within the first year of service, and one (1) hour of additional mental health training each year thereafter. The initial four (4) hours of mental health training should be conducted by the service provider of mental health triage or mental health services to the jail, if possible;

(b) ***Communicable diseases, including*** human immunodeficiency virus infection training and acquired immunodeficiency syndrome training ***[approved by the Cabinet for Health and Family Services]***;

(c) All jail personnel or health services staff who administer medications to prisoners shall be trained in the proper procedures as established[outlined] in the jail's policy and procedures manual; and

(d) Jail personnel who are assigned to duties within a direct supervision area or facility shall receive forty (40) hours of pre-service training related to direct supervision. The training shall be approved by the department.

Section 3. First Aid and CPR. (1) Jail personnel shall have current training in standard first aid equivalent to that provided by the American Red Cross, American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive training within their first year of employment.

(2) Jail personnel shall be certified to perform CPR (cardiopulmonary resuscitation), equivalent to that provided by the American Red Cross, American Heart Association, or an equivalent nationally recognized organization. New jail personnel shall receive certification within their first year of employment.

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on July 13, 2021 prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, November 9, 2021)

501 KAR 14:010. Psychiatric or Forensic Psychiatric Facility Victim Notification System.

RELATES TO: KRS 202A.410, ***439.3401*** ***[349.3401]***

STATUTORY AUTHORITY: KRS 202A.410(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 202A.410 requires the Department of Corrections to promulgate an administrative regulation for [regulations governing] the notification of [a] crime victims, judges, and witnesses [victim] who request [requests] notice of when an involuntarily committed person, who is charged with or convicted of a violent crime, is discharged or escapes from a psychiatric or forensic psychiatric facility.

Section 1. Definitions. (1) "Notification" means the [telephonic] communication by telephone or email to the individual regarding the release or escape of an involuntarily committed person.

(2) "Register" means the individual seeking notice providing a telephone number or email through the VINE system [the electronic communication by the individual recording a telephone number] to be contacted when the involuntarily committed person is released or escapes.

Section 2. (1) If the [The chief administrator of a] psychiatric or forensic psychiatric facility enters the involuntarily committed person's information, the victim, judge, or witness may register for notification [shall make available the name, date of birth, date of commitment, the charge, date of release or escape of the involuntarily committed individual to the Department of Corrections].

(2) The Department of Corrections shall provide:

(a) The ability to register for notification purposes; and

(b) The notification for which the individual has registered.

Section 3. (1) A victim, judge, or witness may register for notification by calling Victim Information and Notification Every Day (VINE) at (800) 511-1670 or visiting www.VINElink.com and register an email or telephone number for notification of the release of the involuntarily committed person[and providing his name, address, and telephone number].[

(2) The victim may provide the notification information by:

(a) Speaking to a VINE operator; or

(b) Accessing the VINE system through the keypad on his telephone.]

Section 4. If the Department of Corrections provides the psychiatric or forensic psychiatric facility with a secure Web-based service to enter the involuntarily committed person's information for [administrator with any instrument or equipment to provide] victim notification, the Web-based account access shall be limited and [instrument or equipment shall be] secured. [The instrument or equipment shall be used only for the purposes set out in this administrative regulation, unless express written permission is obtained from the Department of Corrections.]

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 9, 2021)

701 KAR 5:160. Selection and appointment of non-voting Kentucky board of education members.

RELATES TO: KRS ***118B.140, 118B.160,*** 156.029***, 156.035***

STATUTORY AUTHORITY: KRS 156.029(3)***,[;]*** 156.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(1) ***authorizes[sets forth the membership of]*** the Kentucky Board of Education, including an active public elementary or secondary school teacher and a public high school student serving as non-voting members ***of the board***. KRS 156.029(3) requires the Kentucky Board of Education to promulgate an administrative regulation establishing the process for selecting the non-voting teacher and non-voting student member to serve on the board. This administrative regulation establishes the process for ***the*** selection and appointment of a non-voting active public elementary or secondary school teacher***[;]*** and a non-voting public high school student to serve on the Kentucky Board of Education.

Section 1. Definitions. (1) "Board" means the Kentucky Board

of Education as ***established[~~provided~~]*** in KRS 156.029 and 156.035.

(2) "Commissioner" means the Commissioner of Education appointed by the Kentucky Board of Education pursuant to KRS 156.148.

(3) "Student" means a person enrolled in a Kentucky public high school and classified by the Kentucky public high school as a junior on July 1 of the calendar year for which appointment is sought.

(4) "Teacher" means a person employed on a full-time basis by a Kentucky public school district in a position for which certification is required pursuant to KRS 161.020, and who is not employed in an administrative role.

Section 2. Recommendation and Selection of Non-voting Teacher Member. (1) An application for consideration to become a non-voting teacher member of the board shall contain***[~~the following~~]***:

(a) The applicant's name, home address, public school district of employment, and congressional district of residence;

(b) A resume or curriculum vitae for the applicant;

(c) A narrative statement by the applicant explaining why ***the applicant[~~he/she~~]*** wants to serve as a non-voting teacher member of the board;

(d) A statement of assurance from the applicant that ***the applicant[~~he/she~~]*** meets the definition of a ***"***teacher***"*** as ***defined by Section 1(4)[~~set forth in section one (1)~~]*** of this administrative regulation; and

(e) A description of any pending or final disciplinary action against the applicant by the Education Professional Standards Board.

(2) ***[~~The Commissioner may develop an application form for use that incorporates the requirements of subsection one (1) of this section.~~***

[~~(3)~~] No later than March 1 of each calendar year***,*** the commissioner or the commissioner's designee shall publicly advertise the application process ***established in this administrative regulation*** to become a non-voting teacher member of the board. The public advertisement may be in electronic format and shall be included in a publication designed to reach Kentucky public school teachers. The public advertisement shall contain***[~~the following~~]***:

(a) The composition, authority, and duties of the board;

(b) The time commitment expected of board members;

(c) The eligibility requirements ***established[~~set forth~~]*** in KRS 156.029 and this administrative regulation to be selected as a non-voting teacher member of the board;

(d) The selection process for the non-voting teacher member of the board;

(e) All required application materials as ***established[~~set forth~~]*** in subsection ***[~~one~~]***(1) of this section;

(f) The method of application material submission, including the name and address of the individual designated by the commissioner or commissioner's designee to receive applications; and

(g) The deadline by which all application materials shall be received for consideration, which shall be no later than April 1 of the calendar year for which applications are sought.

(3)[~~(4)~~] Within three (3) business days following the deadline established in subsection ***(2)[~~three(3)~~]*** of this section, the commissioner or commissioner's designee shall forward all eligible ***applications[~~applicants~~]*** to the commissioner's Teacher Advisory Council for review and recommendation. ***Applications for*** applicants who are ineligible for appointment because they do not meet the requirements of KRS 156.029 ***or[~~and~~]*** this administrative regulation shall not be forwarded to the commissioner's Teacher Advisory Council for review and recommendation.

(4)[~~(5)~~] The commissioner's Teacher Advisory Council, or a subset of the council designated by a majority vote of the full council, shall review applications forwarded by the commissioner or commissioner's designee for the non-voting teacher member of the board. No later than May 1, the commissioner's Teacher Advisory Council shall recommend to the board three (3) candidates from the applications for selection as the non-voting teacher member of the board. If the commissioner's Teacher Advisory Council fails to take action to make ***[~~such~~]***a recommendation to the board by May 1, within five (5) business days after May 1, the Commissioner shall recommend to the board three (3) candidates from the applications for selection as the non-voting teacher member of the board.

(5)[~~(6)~~] No later than its last regular meeting of the fiscal year, the board shall consider the recommendation pursuant to subsection ***(4)[~~five(5)~~]*** of this section and, by majority vote, select one (1) candidate to serve as the non-voting teacher member of the board for a one ***(1)*** year term***,*** which shall begin on July 1 immediately following the board's selection, and expire on the following June 30.

(6)[~~(7)~~] The non-voting teacher member of the board serving a term to begin on July 1, 2022 and to expire on June 30, 2023, shall reside in Kentucky's Sixth (6th) congressional district as ***established[~~defined~~]*** by KRS ***118B.160***. Successive non-voting teacher members shall rotate among the state's congressional districts in numerical order.

Section 3. Recommendation and Selection of Non-voting Student Member. (1) An application for consideration to become a non-voting student member of the board shall contain***[~~the following~~]***:

(a) The applicant's name, home address, public school district of enrollment, and congressional district of residence;

(b) A resume or curriculum vitae for the applicant;

(c) A narrative statement by the applicant explaining why ***the applicant[~~he/she~~]*** wants to serve as a non-voting student member of the board;

(d) Two ***(2)*** letters of recommendation from a teacher, school administrator, employer, coach, or volunteer supervisor explaining why the applicant should be appointed to the board; and

(e) If the student is a minor, a parental consent form signed by a parent or guardian acknowledging the time commitment and periodic travel requirements of board members, and providing consent for the applicant to participate as a non-voting student member of the board if selected.

(2) ***[~~The Commissioner may develop an application form for use that incorporates the requirements of subsection one (1) of this section.~~***

[~~(3)~~] No later than March 1 of each calendar year***,*** the commissioner or the commissioner's designee shall publicly advertise the application process ***established in this administrative regulation*** to become a non-voting student member of the board. The public advertisement may be in electronic format and shall be included in a publication designed to reach Kentucky public school teachers and superintendents for further dissemination to students. The public advertisement shall contain***[~~the following~~]***:

(a) The composition, authority, and duties of the board;

(b) The time commitment expected of board members;

(c) The eligibility requirements ***established[~~set forth~~]*** in KRS 156.029 and this administrative regulation to be selected as a non-voting student member of the board;

(d) The selection process ***established in this administrative regulation*** for the non-voting student member of the board;

(e) All required application materials as ***established[~~set forth~~]*** in subsection ***[~~one~~]***(1) of this section;

(f) The method of application material submission, including the name and address of the individual designated by the commissioner or commissioner's designee to receive applications; and

(g) The deadline by which all application materials shall be received for consideration, which shall be no later than April 1 of the calendar year for which applications are sought.

(3)[~~(4)~~] Within three (3) business days following the deadline established in subsection ***(2)[~~three (3)~~]*** of this section, the commissioner or commissioner's designee shall forward all eligible ***applications[~~applicants~~]*** to the commissioner's Student Advisory Council for review and recommendation. ***Applications for*** applicants who are ineligible for appointment because they do not meet the requirements of KRS 156.029 ***or[~~and~~]*** this administrative regulation shall not be forwarded to the commissioner's Student

Advisory Council for review and recommendation.

(4)[(5)] The commissioner's Student Advisory Council, or a subset of the council designated by a majority vote of the full council, shall review applications forwarded by the commissioner or commissioner's designee for the non-voting student member of the board. No later than May 1, the commissioner's Student Advisory Council shall recommend to the board three (3) candidates from the applications for selection as the non-voting student member of the board. If the commissioner's Student Advisory Council fails to take action to make ***[such]***a recommendation to the board by May 1, within five (5) business days after May 1, the commissioner shall recommend to the board three (3) candidates from the applications for selection as the non-voting student member of the board.

(5)[(6)] No later than its last regular meeting of the fiscal year, the board shall consider the recommendation pursuant to subsection ***(4)[five (5)]*** of this section and, by majority vote, select one (1) candidate to serve as the non-voting student member of the board for a one ***(1)*** year term**,** which shall begin on July 1 immediately following the board's selection, and expire on the following June 30.

(6)[(7)] The non-voting student member of the board serving a term to begin on July 1, 2022 and to expire on June 30, 2023, shall reside in Kentucky's Fourth (4th) congressional district as ***established[defined]*** by KRS ***118B.140[118B.160]***. Successive non-voting student members shall rotate among the state's congressional districts in numerical order.

Section 4. Selection to Fill an Unexpired Term as a Result of Resignation or Death. In the event of resignation or death of a non-voting board member selected and appointed pursuant to this administrative regulation, the board shall re-consider the recommendation utilized when it selected the resigned or deceased non-voting member and, by majority vote, select one (1) candidate to serve the unexpired term resulting from the resignation or death of the non-voting member.

Section 5. Appointment. (1) Following action by the board to select a non-voting member pursuant to this administrative regulation, the board's action shall be memorialized in a written resolution signed by the board chair.

(2) No later than five (5) business days following board action to select a non-voting member pursuant to this administrative regulation, the commissioner shall forward the board's written resolution to the Governor and Secretary of State so both may take notice of the action pursuant to KRS 156.029 and this administrative regulation.

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KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Fire Commission
(As Amended at ARRS, November 9, 2021)

739 KAR 2:060. Certification and qualifications of fire and emergency services [~~protection~~] instructors.

RELATES TO: KRS 75.400(2), ***(4), (5),*** 95.010(1)(c), 95A.040***(1)(c),*** (3)(b)***[(1)]***, 95A.210(1)***, (6)***

STATUTORY AUTHORITY: KRS ***95A.040(3)(b),*** 95A.050(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.040(3)(b) authorizes the Kentucky Fire Commission [~~on Fire Protection Personnel Standards and Education~~] to certify fire and emergency services[~~protection~~] instructors. ***KRS 95A.050(3) requires the commission to promulgate reasonable administrative regulations relating to fire protection personnel.*** This administrative regulation ***establishes[sets forth the]*** criteria for instructor certification, including the training and educational requirements of applicants for certification.

Section 1. Definitions. (1) [~~"Bridge course" means an educational program provided by the commission to update out-of-state fire protection instructors seeking Kentucky instructor certification through reciprocity on paperwork and legal requirements specific to fire protection instructors certified in the Commonwealth of Kentucky.~~

~~(2) "Certified~~] ***["Professional firefighter" means a firefighter who meets the requirement of KRS 95A.210]***[and 95A.230]***[.***

(2)] [~~(3) "Certified~~] ***["Volunteer firefighter" means an individual who meets the requirements of 739 KAR 2:100.]*** [~~has received at least 150 hours of certified training as recognized by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of certified training annually to maintain certification.~~]***[***

(3)] [~~(4)~~] "Commission" means the Kentucky Fire Commission [~~Commission on Fire Protection Personnel Standards and Education~~] as defined by KRS 95A.210(1).

(2)[(4)] [~~(5)~~] "Fire and Emergency Services [~~protection~~] instructor" means an individual trained and certified pursuant to KRS 95A.040(1)(c)[~~(2)(b)~~], this administrative regulation, and the National Fire Protection [~~International Fire Service Training~~] Association, as a person qualified to instruct fire protection personnel or supervise the training of fire protection personnel. This term is synonymous with the term "fire and emergency services instructor" as referenced in [~~the International Fire Service Training Association curricula and~~] the National Fire Protection Association 1041 standard.

(3)[(5)] [~~(6)~~] "Fire department" means a fire department, fire protection district, or fire taxing district recognized by the commission as defined in [~~by~~] KRS 75.400(2), (4) and (5) and 95.010(1)(c).

(4)[(6)] [~~(7)~~] "Firefighter I" means an individual who has demonstrated the knowledge and skills to function as an integral member of a firefighting team under direct supervision in hazardous conditions and is certified by the commission as accredited by [~~through~~] the International Fire Service Accreditation Congress within the Commonwealth of Kentucky.

(5)[(7)] [~~(8)~~] "Firefighter II" means an individual who has demonstrated the skills and depth of knowledge to function under general supervision and is certified by the commission as accredited by [~~through~~] the International Fire Service Accreditation Congress within the Commonwealth of Kentucky.

(6)[(8)] [~~(9)~~] "IFSAC" means the International Fire Service Accreditation Congress.

(7)[(9)] [~~(10)~~] "KCTCS" means the Kentucky Community and Technical College System.

(8)[(10)] [~~(11)~~] "MOI" means an educational methodology course meeting the job performance requirements within [~~the objectives of~~] NFPA 1041 and conducted by:

(a) The Kentucky Fire Commission***[/]*** State Fire Rescue Training;

(b) KCTCS;

(c) [~~(b)~~] A regionally accredited [~~Kentucky~~] college or university; or[

~~(c) The National Fire Academy;~~

~~(d) A governmental entity authorized by the National Fire Academy to train within its jurisdiction and approved by the commission; or~~]

(d) [~~(e)~~] An agency approved by the commission to train within its jurisdiction.

(9) "Professional firefighter" is defined by KRS 95A.210(6).

(10)[(11)] [~~(12)~~] "Reciprocity" means the recognition of an accredited [~~IFSAC~~] certification from another state, territory, province, or nation following verification that the certification is current, valid, and without restriction.

(11) "Volunteer Firefighter" means an individual who meets the requirements of 739 KAR 2:100.[

(12)][~~(13)~~]***["Train the Trainer course" means a pedagogy program intended to educate certified fire and emergency services] [protection] [instructors on the specialized curricula, training aides,] [primary highlights] [and uses of courses***

taught to fire protection personnel.]

Section 2. Levels of Certification and Scope. (1) The commission shall certify fire and emergency services [~~protection~~] instructors at the following levels:

(a) Fire and Emergency Services Instructor Level I;

(b) Fire and Emergency Services Instructor Level II; [~~and~~]

(c) Live Fire Instructor; and [~~Instructor Level III.~~]

(d) Live Fire Instructor-In-Charge.

(2) A[~~n~~] fire and emergency services instructor shall only teach a fire service related curricula [~~protection subject~~] upon meeting all requirements for certification mandated by this administrative regulation. An [~~certified fire protection~~] instructor shall [~~may~~] only teach curricula [~~subjects~~] within the scope of the instructor's respective fire and emergency services [~~protection~~] instructor level, subject to the conditions ***established[set forth]*** in this section [~~of this administrative regulation~~].

(3) An instructor certified as a Level I fire and emergency services [~~protection~~] instructor ***may[shall be authorized to]*** conduct firefighter training at any fire department or agency located in the Commonwealth pursuant to paragraphs (a) and (b) of this subsection.

(a) Training shall only be conducted at the request of a fire department or agency.

(b) Upon invitation, a person certified as a Level I fire and emergency services [~~protection~~] instructor shall conduct training using curricula approved by the commission.

(4) A person certified as a Level II fire and emergency services [~~protection~~] instructor ***may[shall be authorized to]*** conduct firefighter training at any fire department or agency located in the Commonwealth pursuant to paragraphs (a) through ***(c)[(d)]*** [~~(c)~~] of this subsection.

(a) Training shall only be conducted at the request of a fire department or agency.

(b) Upon invitation, a person certified as a Level II fire and emergency services instructor may conduct training using curricula approved by the commission or curricula developed by a Level II fire and emergency services instructor.[

~~1. At a fire department of which the Level II fire protection instructor is not a member, the Level II fire protection instructor may personally conduct training using lesson plans that he or she has developed; or~~]

(c) [~~2.~~] At a fire department of which the Level II fire and emergency services [~~protection~~] instructor is a member, the Level II fire and emergency services [~~protection~~] instructor may allow a Level I fire and emergency services [~~protection~~] instructor to conduct training under the Level II fire and emergency services [~~protection~~] instructor's direction, using lesson plans developed by the Level II fire and emergency services [~~protection~~] instructor.

(5) ***The commission shall not certify new Level III fire and emergency services instructors after January 1, 2022. An instructor certified as a Level III fire and emergency services instructor on or before January 1, 2022, shall be eligible for certification renewal pursuant to Section 5 of this administrative regulation and shall retain his or her Level III fire and emergency services instructor certification until:***

(a) The certification expires pursuant to Section 5 of this administrative regulation;

(b) The certification is revoked pursuant to Section 6 of this administrative regulation; or

(c) The instructor is no longer an active member of a Kentucky fire department.

(6) A Level III fire and emergency services [~~protection~~] instructor shall meet the intent of NFPA 1041 and have the ability to develop fire service related curricula. [~~be authorized to:~~

~~(a) Develop comprehensive training curricula and programs for use by single or multiple organizations;~~

~~(b) Conduct organization needs analysis;~~

~~(c) Design record keeping and scheduling systems;~~

~~(d) Develop training goals and implementation strategies; and~~

~~(e) Conduct firefighter training and Level I and II fire protection instructor training at any fire department or agency located in the Commonwealth. Training shall only be conducted at the request of a fire department or agency.~~

~~(6) An instructor shall successfully complete the commission's Train the Trainer course and shall thereafter teach only from lesson plans developed by the commission or State Fire Rescue Training, or curricula approved by the commission prior to instruction.~~]

Section 3. Instructor Certification Requirements. (1) An instructor shall not ***[be authorized to]*** teach without first meeting all requirements for certification established in this administrative regulation.

(2) An applicant for initial certification as a Level I fire [~~protection~~] and emergency services instructor shall complete and submit:

(a) A [~~completed~~] Kentucky Fire and Emergency Services Instructor Level I webform [~~Level I Fire Service Instructor Application signed by the applicant's fire chief or designee~~];

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or a recognized federal fire department within the Commonwealth;

(c) Verification of ***at least*** one (1) year of [~~two (2) years' continuous~~] experience as a certified professional or volunteer firefighter in the Commonwealth of Kentucky, or in another state, preceding the application date for Level I fire and emergency services [~~protection~~] instructor certification;

(d) [~~(c)~~] Verification [~~Copies~~] of IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, Firefighter I and II certificates on which the applicant's seal numbers shall be denoted and provides proof of completion of both written and skill performance tests; ***[and]*** [~~:~~]

(e) ***A copy of the applicant's high school diploma or transcript, general equivalency diploma (GED), college degree, or transcript from a regionally accredited institution of higher learning; and***

(f) 1. [First] Verification of MOI***, [of]*** IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, Fire Instructor I certification on which the applicant's seal numbers shall be denoted and provides proof of completion of both written and skill performance tests;

2.[(f) Second] Verification of MOI***, [of]*** a Bachelor's degree in education issued by a regionally accredited institution of higher education; ***or***

3.[(g) Third] Verification of MOI***, individual who[of]*** holds a position as an instructor or instructional faculty member of a regionally accredited institution of higher education in the subject of fire service or a related field***[; or***

(h) A copy of the applicant's high school diploma or transcript, general equivalency diploma (GED), college degree, or transcript from a regionally accredited institution of higher learning].[

~~1. Certification seal numbers shall be denoted in the designated portion of the instructor Level I application; and~~

~~2. IFSAC accredited Kentucky, or IFSAC accredited Kentucky reciprocity, certification shall provide documentation of successful completion of both written and skills performance tests; or~~

~~(d) A copy of the applicant's high school diploma or general equivalency diploma (GED), and one (1) of the following MOI:~~

~~1. First MOI: Certification as an IFSAC accredited Kentucky, or IFSAC accredited Kentucky Reciprocity, Instructor I;~~

~~2. Second MOI: A Bachelor's degree in education issued by an accredited institution of higher education; or~~

~~3. Third MOI: Holds a position as an instructor or instructional faculty member of an institution of higher education in the subject of fire service, or a related field.~~]

(3) An applicant for initial certification as a Level II fire [~~protection~~] and emergency services instructor shall complete and submit:

(a) A [~~completed~~] Kentucky Fire and Emergency Services Instructor Level II webform [~~Level II Fire Service Instructor Application signed by the applicant's fire chief or designee, with the applicant's IFSAC accredited Kentucky, or IFSAC accredited Kentucky Reciprocity certification seal number or numbers denoted~~

~~as indicated~~];

(b) Verification of active member status of a Kentucky fire department, degree program at a regionally accredited institution of higher education, or a recognized federal fire department within the Commonwealth; and

(c) Verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Level I Fire and Emergency Services Instructor for ***at least*** one (1) year.

(4) ***[Fire and Emergency Services Instructor Level III will no longer be necessary for issuance within the Commonwealth. A previously approved, recognized, and currently active Fire and Emergency Services Level III instructor shall retain Level III status for as long as he or she is recognized as active status.***

~~(5)~~] An applicant for certification as a Live Fire Instructor shall complete and submit:

(a) A Kentucky Live Fire Instructor webform;

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or a recognized federal fire department within the Commonwealth;

(c) Verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Fire and Emergency Services Level I instructor for ***at least*** two (2) years; and

(d) Proof of successful completion of the commission approved NFPA 1403 class and written examination.

(5)[~~(6)~~] An applicant for certification as a Live Fire Instructor-In-Charge shall complete and submit:

(a) A Kentucky Live Fire Instructor-In-Charge webform;

(b) Verification of active member status of a Kentucky fire department, degree program at an institution of higher education within the Commonwealth, or recognized federal fire department within the Commonwealth;

(c) Verification of IFSAC accredited Kentucky or IFSAC accredited reciprocity certification as a Fire and Emergency Services Level I instructor for ***at least*** two (2) years***~~)~~]***; and

(d) Proof of successful completion of the commission approved NFPA 1403 class and written examination.[

~~(b) Verification of four (4) years' continuous experience as a certified professional or volunteer firefighter in the Commonwealth of Kentucky, or in another state, preceding the application date for Level I fire protection instructor certification;~~

~~(c) Proof of two (2) years' experience as a Level I fire protection instructor; and~~

~~(d) Verification of completion of all Level I fire protection instructor renewal requirements as set forth in this administrative regulation.~~

~~(4) An individual desiring initial certification as a Level III fire protection instructor shall submit:~~

~~(a) A Level III Fire Service Instructor Application completed on the applicant's behalf by the fire department for which the applicant has served as an active member for at least six (6) consecutive years and signed by the applicant's fire chief or designee, with the applicant's IFSAC accredited Kentucky, or IFSAC accredited Kentucky Reciprocity certification seal number(s) denoted as indicated;~~

~~(b) Service as a fire protection Level II instructor for a minimum of two (2) years prior to the application date for fire protection Level III instructor certification;~~

~~(c) Positive recommendations following interviews with the commission, the Fire Commission Division Director of Operations, and the State Fire Rescue Training Division Director, or the director's designee;~~

~~(d) Verification of completion of all Level II fire protection instructor renewal requirements as set forth in this administrative regulation; and~~

~~(e) Evidence of previous assistance with the delivery of at least two (2) MOI approved by the commission.~~]

Section 4. Reciprocity. (1) Individuals seeking certification as a Level I or Level II [~~, II, or III~~] fire and emergency services [~~protection~~] instructor through reciprocity from any state, territory, or country [~~or territory in the United States~~] shall be granted approval by the commission if the applicant meets all certification requirements for Level I or Level II fire and emergency services [~~, II, or III~~] instructor certification pursuant to Section 3 of this administrative regulation.

(2) The applicant shall complete and provide proof of completion of ***at least*** eight (8) hours of ***[~~methodology~~]*** continuing education ***in methodology*** taught by Kentucky State Fire Rescue Training.[~~, if:~~

~~(1) The two (2), four (4), or six (6) year continuous work periods mandated by Section 3(2)(b), (3)(b), and (4)(a) of this administrative regulation shall have been completed while certified by and in good standing with the certifying agency of the state in which the firefighter served for the period of time necessary to qualify for reciprocity in the Commonwealth of Kentucky;~~

~~(2) The applicant's continuous work periods mandated by Section 2(2)(b), (3)(b), and (4)(a) of this administrative regulation shall immediately precede the date on which the applicant applies for Level I, II, or III fire protection instructor certification in the Commonwealth of Kentucky; or~~

~~(3) The individual shall complete the commission's bridge course prior to certification as a fire protection instructor by the commission.~~]

Section 5. Instructor Certification Terms and Renewal. (1) Unless renewed, certification for Levels I, II, and III fire and emergency services [~~protection~~] instructors shall expire after four (4) years from the date of certification and approval, and every four (4) years thereafter. [~~a period of two (2) years in a cyclical pattern based upon the last number of the instructor's Kentucky fire instructor number. All instructors with a Kentucky fire instructor number ending in zero (0) or an even number shall recertify by January 1, 2017, and all instructors with a Kentucky fire protection instructor number ending in an odd number shall recertify by January 1 of the subsequent year.~~]

(2) The commission shall grant certification renewal for Level I***,[~~ and~~]*** II***, and III*** fire and emergency services instructors who submit:

(a) Documentation of ***at least*** twenty (20) hours of training per year during the renewal cycle; and [~~instructional time using curricula developed or approved by the commission and completed prior to the expiration of the instructor's current certification period;~~]

(b) Verification of attendance of at least eight (8) hours of methodology training during the renewal cycle. [~~twenty (20) student training hours, at least four (4) hours of which shall consist of an MOI approved by the commission; and~~

~~(c) A Fire Service Renewal Application provided by the commission and signed by both the applicant and the applicant's fire chief or designee.~~

~~(3) The forty (40) instructional and student training hours mandated by subsection (2)(a) and (b) of this section may also be used to complete the instructor's firefighter recertification hours.~~

~~(4) The commission shall grant certification renewal for Level III instructors who submit:~~

~~(a) A Fire Service Renewal Application provided by the commission and signed by both the applicant and the applicant's fire chief or designee;~~

~~(b) Documentation that the applicant has instructed a minimum of one (1) MOI or instructional technique class during the two (2) year certification period; and~~

~~(c) Verification of completion of a minimum of one (1) instructor training workshop lasting at least eight (8) hours and approved by the commission.~~

~~(5) A fire protection instructor who obtained instructor certification prior to the effective date of this administrative regulation shall be required to meet the renewal requirements as set forth in this administrative regulation subsequent to the completion of one (1) full recertification period.~~]

Section 6. Suspension or Revocation of Certification and Appeal. (1) The commission's ***[~~Education and~~]*** Eligibility [~~/State Aid~~] Committee shall revoke or suspend an instructor's certification if, after reasonable notice and a hearing, it is determined that the instructor committed misconduct with regard to fire and emergency

services [~~protection~~] instructor certification or job duties. Misconduct shall include ***conduct such as the following[~~, but not be limited to~~]***: [~~. Examples include, for example:~~]

(a) A material misstatement or misrepresentation in any document furnished to the commission to obtain the issuance or renewal of certification;

(b) Falsification of training records; or

(c) An act of negligence or malfeasance.

(2) An [~~fire protection~~] instructor whose certification is subject to suspension or revocation shall be entitled to thirty (30) days' notice and a hearing before the commission's [~~Education and~~] Eligibility [~~/State-Aid~~] Committee.

(3) If the commission's [~~Education and~~] Eligibility [~~/State-Aid~~] Committee hearing results in a decision to revoke or suspend an instructor's certification, the instructor shall be notified in writing of the action and the right to appeal before the commission no later than ten (10) days following the hearing.

(4) An instructor shall request an appeal in writing within fifteen (15) days of receipt of the notification of the commission's intent to revoke or suspend the instructor's certification.

(5) If the individual appeals the commission's intent to revoke or suspend his or her instructor certification, a hearing shall be conducted at the next regular meeting of the commission, or within thirty (30) days of the appeal request, whichever is first.

(6) If the commission's hearing results in a decision to revoke or suspend an instructor's certification, the instructor shall be notified in writing of the action and the right to appeal pursuant to KRS Chapter 13B no later than ten (10) days following the hearing of the appeal.

(7) The certification of an instructor who fails to maintain active status with a commission recognized Kentucky fire department, degree program, federal fire department, or Kentucky State Fire Rescue Training shall be automatically suspended until active status with a commission recognized Kentucky fire department, degree program, federal fire department, or Kentucky State Fire Rescue Training is reinstated and all requirements for recertification are met.

Section 7. Reinstatement of Certification. (1) The commission shall reinstate the certification of an instructor whose certification has lapsed for a period not exceeding one (1) year, unless the applicant has been subjected to discipline that would prevent reinstatement, upon submission of:

(a) A completed Kentucky Fire and Emergency Services Instructor Reinstatement webform;

(b) Proof of completion of ***at least*** eight (8) hours of methodology training provided by State Fire Rescue Training; and

(c) Verification of attendance of ***at least*** twenty (20) hours of recognized fire service training following the date of reactivation by a commission recognized Kentucky fire department of which the applicant is a member.[~~application.~~

~~(2) The commission shall reinstate the certification of an instructor whose certification has lapsed for a period of more than one (1) year but not exceeding three (3) years, provided the instructor meets all recertification requirements and has attend a commission recognized bridge course.~~]

(2) [~~(3)~~] The commission shall not reinstate the certification of an instructor whose certification has lapsed for a period exceeding one (1) [~~three (3)~~] year[s].

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

~~(a) "Fire and Emergency Services Instructor, Eighth Edition" 2012;~~]

(a) [~~(b)~~] "Kentucky Fire and Emergency Services Instructor Level I webform", 2021 [~~1 Certification Application" 2014~~];

(b) [~~(c)~~] "Kentucky Fire and Emergency Services Instructor Level II webform", 2021 [~~2 Certification Application" 2014~~];

(c) [~~(d)~~] "Kentucky Live Fire Instructor webform", 2021;

(d) "Kentucky Live Fire Instructor-In-Charge webform", 2021; and ["~~Kentucky Fire Service Instructor Level 3 Certification Application" 2014; and~~]

(e) [~~(e)~~] "Kentucky Fire and Emergency Services Instructor Reinstatement webform", 2021 [~~Certification Renewal Application" 2014~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Fire Commission office, 110 Cleveland Drive, Paris, Kentucky 40361 [~~Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601~~], Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at: http://kyfires.acadisonline.com/.

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LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, November 9, 2021)

803 KAR 25:190. Utilization review -- Medical Bill Audit -- Medical Director -- Appeal of Utilization Review Decisions.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5) and (6), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department [~~Office~~] of Workers' Claims, and the commissioner [~~executive director~~] may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner [~~executive director~~] the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner [~~executive director~~] to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. KRS 342.035(6) allows the commissioner to promulgate regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery of payment of medical services to employees receiving medical and related benefits under KRS Chapter 342. This administrative regulation insures that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program and establishes a medical director to speed the delivery of payment of medical services to employees receiving medical and related benefits under this chapter. This administrative regulation does not abrogate the right, as provided in KRS 342.020, of an injured employee to choose his treating physician, or an employer to participate in a managed health care system.

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday or any day which is a legal holiday.

(2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.

(3) "Carrier" is defined by KRS 342.0011(6).

(4) [~~(2)~~] "Commissioner[~~Executive director~~]" is defined by KRS 342.0011(9).

(5) [~~(3)~~] "Denial" means a determination by the utilization reviewer that the medical treatment, proposed treatment, service, or medication [~~or service~~] under review is not medically necessary or appropriate and, therefore, payment is not recommended.

(6) "Department" ***is defined by KRS 342.0011(8) [~~means the Kentucky Department of Workers' Claims~~]***.

(7) [~~(4)~~] "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with

adopted fee schedules.

(8) "Medical Director" means the Medical Director of the Department of Workers' Claims appointed by the Secretary.

(9) "Medically necessary" or "medical necessity" ***means healthcare services, including medications, that a medical provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:***

1. In accordance with generally accepted standards of medical practice;

2. Clinically appropriate, in terms of type, frequency, extent, site and duration; and

3. Considered effective for the patient's illness, injury, or disease. [~~is defined in 803 KAR 25:260(12)~~].

(10) "Medical provider" ***means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, osteopathic and chiropractic practitioners, physician assistants, and advanced practice registered nurses, acting within the scope of their license [~~is defined in 803 KAR 25:260 Section 1(11)~~].***

(11) "Physician" is defined by KRS 342.0011(32).

(12) [~~(5)~~] "Preauthorization" ***[~~is defined in 803 KAR 25:260(14).~~]*** means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(13) "Secretary" means the Secretary of the Kentucky Labor Cabinet.

(14) [~~(6)~~] "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease.

(15) [~~(7)~~] "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner [executive director] by each carrier describing the procedures governing utilization review and medical bill audit activities.

(16) [~~(8)~~] "Vendor" means a person or entity which implements a utilization review and medical bill audit program for purposes of offering those services to carriers.

Section 2. Implementation. (1) The requirements established in Sections 3 through 9 of this administrative regulation shall apply to all utilization reviews and medical bill audits conducted before **June [~~January~~]** 1, 2022.

(2) The requirements established in Sections 10 through 18 of this administrative regulation shall apply to all utilization reviews and medical bill audits conducted on or after **June [~~January~~]** 1, 2022.

Section 3 [~~2~~]. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:

(a) A utilization reviewer is appropriately qualified;

(b) Treatment rendered to an injured worker is medically necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy complies with KRS Chapter 342 and ***803 KAR Chapter 25[~~applicable administrative regulations~~]***;

(b) A medical bill auditor is appropriately qualified; and

(c) A statement for medical services is not disputed without reasonable grounds.

Section 4 [~~3~~]. Utilization Review and Medical Bill Audit Plan Approval. (1) A carrier shall fully implement and maintain a utilization review and medical bill audit program.

(2) A carrier shall provide to the commissioner [~~executive director~~] a written plan describing the utilization re-view and medical bill audit program. The commissioner [~~executive director~~] shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner [~~executive director~~] for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner [~~executive director~~].

(4) A carrier who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner [~~executive director~~] of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years [~~, or until December 31, 2000, whichever is later~~].

(a) At least ninety (90) calendar days prior to the expiration of the period of approval, a carrier or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner [~~executive director~~] shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

Section 5 [4]. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner [~~executive director~~] shall include the following elements:

(1) A description of the process, policies***,*** and procedures ***for making [~~whereby~~]*** decisions ***[~~shall be made~~]***;

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;

(4) A description of the qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit and the manner in which the personnel shall be involved in the review process;

(5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096;

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;

(9) An assurance that a database shall be maintained, which shall:

(a) Record:

1. Each instance of utilization review;
2. Each instance of medical bill audit;
3. The name of the reviewer;
4. The extent of the review;
5. The conclusions of the reviewer; and
6. The action, if any, taken as the result of the review;

(b) Be maintained for a period of at least two (2) years; and

(c) Be subject to audit by the commissioner [~~executive director~~], or his agent, pursuant to KRS 342.035(5)(b);

(10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to an interested party at least five (5) days per week, forty (40) hours per week during normal business hours;

(11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and

(12) An assurance that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035 (8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making. [~~An assurance that the acute low back pain practice parameter adopted by the executive director pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for evaluating an applicable low back claim. Additional~~

~~medical guidelines which may be adopted by the executive director pursuant to KRS 342.035(8)(a) shall be incorporated in a utilization review plan.~~]

Section 6 [~~5~~]. Claim Selection Criteria. (1) Unless the carrier, in good faith, denies the claim as noncompensable, medical services reasonably related to the claim shall be subject to utilization review if:

(a) A medical provider requests preauthorization of a medical treatment or procedure;

(b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;

(c) The total medical costs cumulatively exceed $3000;

(d) The total lost work days cumulatively exceed thirty (30) days; or

(e) An arbitrator or administrative law judge orders a review.

(2) If applicable, utilization review shall commence when the carrier has notice that a claims selection criteria has been met.

(a) The following requirements shall apply if preauthorization has been requested:

1. The initial utilization review decision shall be communicated to the medical provider and employee within two (2) business [~~working~~] days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional business [~~working~~] days.

2. The requested information shall be ***submitted[~~tendered~~]*** by the medical provider within ten (10) business [~~working~~] days.

3. The initial utilization review decision shall be rendered within two (2) business [~~working~~] days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The initial utilization review decision shall be communicated to the medical provider and employee within ten (10) calendar days of the initiation of the utilization review process, unless additional information is required. If additional information is required, tender of a single request shall be made within two (2) additional business [~~working~~] days.

2. The requested information shall be ***submitted[~~tendered~~]*** by the medical provider within ten (10) business [~~working~~] days.

3. The initial utilization review decision shall be rendered within two (2) business [~~working~~] days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be provided within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1). The thirty (30) day period shall commence on the date of the final utilization review decision.

(5) Each medical bill audit shall be initiated within seven (7) calendar days of receipt to assure:

(a) Compliance with applicable fee schedules***, in accordance with 803 KAR Chapter 25***;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 7 [~~6~~]. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. ***The following professionals shall issue an initial utilization review approval:***

(a) A physician***; [~~,~~]***

(b) A registered nurse***; [~~,~~]***

(c) A licensed practical nurse***; [~~,~~]***

(d) A medical records technician***; [~~,~~]*** or

(e) Other personnel ***whose[~~, who through~~]*** training and experience ***qualify them[~~is qualified~~]*** to issue decisions on medical necessity or appropriateness ***[~~, shall issue the initial utilization review approval~~]***.

(2) ***Only*** a physician ***may[~~shall~~]*** issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 8 [~~7~~]. Written Notice of Denial. (1) Following initial review, a written notice of denial shall:

(a) Be issued to both the medical provider and the employee in a timely manner but no more than ten (10) calendar days from the initiation of the utilization review process;

(b) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and

(c) Contain:

1. A statement of the medical reasons for denial;

2. The name, state of licensure and medical license number of the reviewer; and

3. An explanation of utilization review reconsideration rights.

(2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 9 [~~8~~]. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review.

(a) A request for reconsideration of the initial utilization review decision shall be made by an aggrieved party within fourteen (14) calendar days of receipt of a written notice of denial.

(b) Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written reconsideration decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION".

(d) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(2)(a) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area, or a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095***,*** has not previously reviewed the matter, an aggrieved party may request further review by:

1. A board eligible or certified physician in the appropriate specialty or subspecialty; or

2. A chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.

(b) A written decision shall be rendered within ten (10) calendar days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".

(3) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within fourteen (14) calendar days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written

decision shall be clearly entitled "MEDICAL BILL AUDIT RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 10. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:

(a) A utilization reviewer is appropriately qualified;

(b) Treatment rendered to an injured worker is medically necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy ***comply [complies]*** with KRS Chapter 342 and ***803 KAR Chapter 25[applicable administrative regulations]***;

(b) A medical bill auditor is appropriately qualified; and

(c) A statement for medical services is not disputed without reasonable grounds.

Section 11. Utilization Review and Medical Bill Audit Plan Approval. (1) A carrier shall fully implement and maintain a utilization review and medical bill audit program.

(2) A carrier shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner.

(4) A carrier who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years.

(a) At least ninety (90) calendar days prior to the expiration of the period of approval, a carrier or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

(6) A carrier, who contracts with an approved vendor for utilization review services, shall provide annually to the commissioner summaries of the number of ***utilization [utilizations]*** reviews, waivers per KRS 342.035(5)(c), utilization review approvals for treatment, utilization review denials for treatment and appeals to the medical director. ***These[Such]*** annual reports of the approved vendor shall be filed with the Department by August 1 for the preceding fiscal year ending June 30.

Section 12. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

(1) A description of the process, policies and procedures ***for making [whereby]*** decisions ***[shall be made]***;

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured;

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;

(4) A description of the***:***

(a) Qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit***;*** and

(b) The manner in which the personnel shall be involved in the review process;

(5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096;

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;

(9) An assurance that a database shall be maintained, which shall:

(a) Record:

1. Each instance of utilization review;

2. Each instance of medical bill audit;

3. The name of the reviewer;

4. The extent of the review;

5. The conclusions of the reviewer; and

6. The action, if any, taken as the result of the review;

(b) Be maintained for a period of at least two (2) years; and

(c) Be subject to audit by the commissioner, or his agent, pursuant to KRS 342.035(5)(b);

(10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to an interested party at least five (5) days per week, forty (40) hours per week during normal business hours;

(11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information; and

(12) An assurance that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035 (8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making.

Section 13. Claim Selection Criteria and Process.

(1) Unless the medical payment obligor, in good faith, denies the claim as noncompensable or waives utilization review pursuant to KRS 342.035 (5)(c), medical services reasonably related or asserted to be related to the claim shall be subject to utilization review if:

(a) A medical provider requests preauthorization of a medical treatment or procedure;

(b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;

(c) The total medical costs cumulatively exceed ***$3,000[$1000]***; or

(d) The total lost work days cumulatively exceed ***thirty (30)[fifteen (15)]*** days.

(2) Utilization review shall commence when the medical payment obligor has notice that a claims selection criteria has been met. The medical payment obligor may waive utilization review pursuant to KRS 342.035(5)(c) within two (2) business days of ***the [such]*** notice. Failure by the medical payment obligor to waive and communicate its waiver to the employee and medical provider or initiate its utilization review process within two (2) business days shall result in the medical payment obligor paying for the subject medical services pursuant to the appropriate fee schedules***, in accordance with 803 KAR Chapter 25***.

(a) The following requirements shall apply if preauthorization has been requested and utilization review has not been waived:

1. The utilization review decision shall be rendered and communicated to the medical provider and employee**, and the employee's attorney if represented,** within two (2) business days of the initiation of the utilization review process, unless additional information is required. If additional information is required, ***[tender of]*** a single request shall be made within two (2) additional business days.

2. The requested information shall be ***submitted [tendered]*** by the medical provider within five (5) business days.

3. The utilization review decision shall be rendered and

communicated within two (2) business days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The utilization review decision shall be rendered and communicated to the medical provider and employee**, and the employee's attorney if represented,** within five (5) business days of the initiation of the utilization review process, unless additional information is required. If additional information is required, ***[~~tender of~~]*** a single request shall be made within two (2) additional business days.

2. The requested information shall be ***submitted [~~tendered~~]*** by the medical provider within five (5) business days.

3. The utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be rendered and communicated within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period for paying medical expenses shall commence on the date of the utilization review decision.

(5) Each medical bill audit shall be initiated within seven (7) calendar days of receipt to assure:

(a) Compliance with applicable fee schedules***, in accordance with 803 KAR Chapter 25***;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4).

Section 14. Utilization Review and Medical Bill Audit Personnel Qualifications.

(1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. A physician, registered nurse, licensed practical nurse, medical records technician or other personnel, who through training and experience is qualified to issue decisions on medical necessity or appropriateness, shall issue the initial utilization review approval.

(2) ***Only*** a physician ***may [~~shall~~]*** issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 15. Written Notice of Denial.

(1) Following utilization review, a written notice of denial shall:

(a) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and

(b) Contain:

1. A statement of the medical reasons for denial;

2. The name, state of licensure**,** and medical license number of the reviewer; and

3. An explanation of utilization appeal rights with instructions on how to proceed with an appeal.

(2) The Department shall develop and provide a form on its website that a medical payment obligor may use to comply with Section 15 (1) above.

(3) A copy of the written notice of denial along with the mailing address, telephone number, and, if known, the email address of the employee, the employee's attorney if represented, and medical provider whose treatment, recommended treatment, or prescribed medication is being denied shall be sent by electronic mail to the medical director on the same day that the notice of denial is rendered and communicated to that medical provider and employee. The medical director shall then immediately notify the employee, the employee's attorney if represented, and that medical provider of the actions required to appeal the utilization review denial at no cost to the employee.

(4) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 16. Medical Director.

(1) Within the department there shall be a medical director. The medical director shall be a licensed physician in good standing with the Kentucky Board of Medical Licensure.

(2) The Secretary shall appoint the medical director, upon consultation with the Commissioner to a term of four (4) years. A medical director may serve more than one (1) term of four (4) years.

(3) If a vacancy occurs during a four (4) year term, the secretary shall appoint a licensed physician in good standing with the Kentucky Board of Medical Licensure as medical director for the unexpired term. Nothing in this administrative regulation shall prevent the Secretary from appointing a licensed physician in good standing with the Kentucky Board of Medical Licensure to fill an unexpired term and to serve a subsequent term.

(4) After consultation with the Commissioner, the Secretary may remove the medical director for good cause, the grounds for which shall be expressed in writing.

(5) The medical director shall:

(a) Process appeals of utilization review decisions pursuant to this administrative regulation; and

(b) At least annually, review and advise the Commissioner and the Secretary on the effectiveness of the Medical Fee Schedule for Physicians, the Treatment Guidelines and the Pharmaceutical Formulary in reducing costs and speeding the delivery of medical services to employees receiving medical benefits under KRS Chapter 342.

(6) If the treatment is outside of the medical director's certification or specialty, the medical director may seek the assistance of other physicians with the appropriate certification or specialty to assist or perform any tasks outlined within this administrative regulation; the other physicians shall not be the physician whose treatment or recommended treatment is under review or the physicians who issued or upheld the utilization review denial.

(7) [

~~(1) After consultation with the Commissioner, the~~] **[~~The~~]** ***[~~Secretary shall appoint a medical director to:~~***

~~(a) process appeals of utilization review decisions and medical bill audit decisions rendered pursuant to this administrative regulation;~~] [~~,~~] [~~and~~

~~(b) at least annually, review and advise the commissioner and the Secretary on the effectiveness of the Medical Fee Schedule for Physicians, the Treatment Guidelines and the Pharmaceutical Formulary in reducing costs and speeding the delivery of medical services to employees receiving medical benefits under KRS Chapter 342.~~

~~(2) The medical director shall be a Kentucky licensed physician in good standing with the Kentucky Board of Medical Licensure.~~

~~(3) The medical director may, if~~] [~~when~~] [~~appropriate, seek the assistance of other physicians to assist or perform any tasks outlined within this administrative regulation. If~~] [~~When~~] [~~the treatment under appeal is chiropractic treatment, the medical director shall seek the assistance of a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.~~

~~(4)~~] The medical director shall chair a Workers' Compensation Medical Advisory Committee to provide advice on issues related to the medical treatment of injured workers. The medical director may request the committee to advise on the medical aspects of the Department's various programs in advancing the goal of ensuring that all injured employees receive superior quality and cost efficient

treatment to facilitate recovery from injury and a swift, safe return to the workforce.

(a) In addition to the medical director serving as chair, the commissioner shall serve on the Workers' Compensation Medical Advisory Committee and may appoint the following to the Workers' Compensation Medical Advisory Committee:

1. Deputy commissioner***; [;]*** and

2. A representative for***:***

a. Employers***;[;]***

b. Employees***;[;]***

c. Labor unions***;[;]***

d. Insurance***;[;]***

e. Self-insured ***employers;[;]***

f. Occupational medicine***;[;]***

g. Chiropractic***;[;]***

h. Orthopedics***;[;]***

i. Neurosurgery***;[;]***.

j. Psychiatry [~~psychiatric~~];[;]

k. Pain management rehabilitation***;[;]***

l. Pain management***;[;]***

m. Emergency medicine***;[;]***

n. Hospitals, [~~a hospital representative~~];[;] and

o. Pharmacies [~~a pharmacy representative~~].

(b) No less than annually, the Workers' Compensation Medical Advisory Committee shall provide the commissioner and Secretary with a report concerning the activity, effectiveness and impact of the medical director and the utilization review programs on the delivery of payment of medical services to injured employees.

Section 17. Appeals of Utilization Review Decisions.

(1) Upon receipt of a written notice of denial of treatment subject to utilization review, the employee or medical provider whose treatment, recommended treatment, or prescribed medication, is being denied may appeal the utilization review decision to the medical director.

(2) The employee or medical provider whose treatment, recommended treatment, or prescribed medication is being denied shall have ***thirty (30)[~~forty-five (45)~~]*** **[~~thirty (30)~~]** calendar days from receipt of the written notice of denial to appeal the utilization review decision to the medical director. The medical director may extend the time to appeal ***upon request and*** for ***[~~good~~]*** cause.

(3) Failure to appeal to the medical director shall result in the utilization review decision having preclusive effect as to the reasonableness and necessity of the treatment.

(4) An appeal to the medical director shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period to pay the approved medical expenses shall commence on the date of the medical director's written determination or the date on which the parties reach agreement regarding disputed treatment.

(5) The Department shall charge a fee of ***$200[~~$400.00~~]*** for each appeal submitted to the medical director. The fee shall be paid by the medical payment obligor no later than ***twenty-one (21) [~~fifteen (15)~~]*** calendar days following the date of the appeal to the medical director. Failure to pay the fee shall constitute a failure to complete a necessary step in the administrative review process. ***This failure shall[~~and~~]*** be construed as an admission by the employer that the denial was in error**,** and the medical director ***shall [~~should~~]*** find accordingly. Failure to pay the fee may also result in assessment of a civil penalty pursuant to KRS 342.990(7)(e).

(6) ***(a) The appeal shall be dismissed if,*** within five (5) calendar days of the appeal to the medical director, the medical payment obligor ***provides [~~may cause the appeal to be dismissed by providing~~]*** notice ***of dismissal*** to ***the:***

1. Medical director***; [;]***

2. Medical provider whose treatment, recommended treatment, or prescribed medication is being denied***; [;]*** and

3. Employee.

(b) With ***this [~~such a~~]*** dismissal, the medical payment obligor shall authorize the payment of the questioned services pursuant to the appropriate fee schedule***, in accordance with 803 KAR Chapter 25***. If ***the [~~such~~]*** dismissal occurs, ***a [~~no~~]*** fee as required by this ***administrative*** regulation shall ***not*** be due, or if paid, the fee shall be refunded to the medical payment obligor.

(7) Upon receipt of an appeal request by an employee or medical provider whose treatment or recommended treatment is being denied:

(a) The medical director shall conduct the utilization review appeal ***in keeping with the treatment guidelines and pharmaceutical formulary created or adopted by the commissioner***.

(b) ***The medical director shall consider the opinion of the medical provider whose treatment, recommended treatment, or prescribed medication is being denied.***

(c) The medical director may contact the medical provider whose treatment, recommended treatment, or prescribed medication is being denied for the purpose of obtaining any necessary missing information. **Necessary information shall be considered missing until the medical director has obtained:**

1. All of the records reviewed by the physician that issued the utilization review denial; and

2. All medical treatment records from the date of the injury or for the two year period preceding the date of the utilization review, whichever is shorter, for the injury or occupational disease giving rise to the treatment, recommended treatment, or prescribed medication for which the utilization review denial was issued.

(c) **Within seven (7) calendar days from receipt of the appeal, the [~~The~~]** medical director shall set a date on which all relevant information shall be due to the medical director.

(d) The medical director shall determine the medical necessity of the treatment, recommended treatment, or prescribed medication within fourteen (14) calendar days after receipt of all necessary information by the medical director.

(e) Upon determination that any or all of the treatment, recommended treatment, or prescribed medication is reasonable and necessary, the medical director shall plainly state the reasons for each approval in a written determination.

(f) Upon determination that any or all of the treatment, recommended treatment, or prescribed medication is not reasonable and necessary, the medical director shall plainly state the reasons for each denial in a written determination.

(g) **No later than two (2) days after the medical director has made a determination, the [~~The~~]** medical director shall transmit the written determination to the medical provider whose treatment, recommended treatment, or prescribed medication, is being denied***; [;]*** the employee***; [;]*** **the employee's attorney if represented*****; [;]*** the employer***;*** and the medical payment obligor by facsimile, electronic mail**,** or the United States Postal Service **[~~within fourteen (14) calendar days after receipt of all necessary information by the medical director~~].**

(h) ***If [~~Additionally, upon a determination by~~]*** the medical director ***determines*** that there was no reasonable basis upon which to deny the treatment, recommended treatment, or prescribed medication, or that the medical payment obligor failed to follow the required utilization review procedure, ***then*** the medical director shall request ***the commissioner or the administrative law judge to impose the appropriate penalties, fines, or [~~that~~]*** sanctions ***[~~be imposed~~]*** on the medical payment obligor by directing ***that*** the employee's or physician's costs of the appeal, including reasonable attorney's fees, be paid by the medical payment obligor. ***[~~Whether or not to impose the these~~*** **[~~aforementioned~~]** ***[~~sanctions is within the discretion of the commissioner or administrative law judge to whom the request for sanctions was addressed.~~]***

(i) If at any time during the appeal with the medical director, the medical payment obligor raises work relatedness, causation or non-compensability issues, the parties shall be advised by the medical director that resolution of these issues requires a filing of an application for adjustment of claim or Form 112, Medical Dispute, whichever is appropriate. The medical director, however, shall continue with the appeal and issue a written determination of the reasonableness and necessity of the proposed medical treatment consistent with this regulation.

(8) A determination by the medical director of the

reasonableness and necessity of the treatment, recommended treatment, or prescribed medication shall remain effective for six (6) months from the date of the written determination of the medical director, unless a change in condition is shown by objective medical findings.

(9) If the medical director's determination is to approve the medical treatment, the medical payment obligor shall pay for the treatment, recommended treatment, or prescribed medication within the thirty (30) day time period set forth in KRS 342.020(4) unless a Form 112, Medical Dispute, is timely filed.

(10) If a party disagrees with the medical director's written determination, the aggrieved party may file a Form 112, Medical Dispute, and proceed in accordance with 803 KAR 25:012.

(11) The filing of a Form 112, Medical Dispute, shall toll the thirty (30) day period for paying medical expenses pursuant to KRS 342.020(4) until such time as the reasonableness and necessity of the proposed medical treatment is decided by an administrative law judge.

(12) Failure to file a Form 112, Medical Dispute, within ***thirty (30)[~~fourteen (14)~~]*** calendar days shall result in the written determination of the medical director having preclusive effect as to the reasonableness and necessity of the treatment that is the subject of the medical director's determination.

Section 18. Reconsideration and Appeals of Medical Bill Audit Decisions. A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit decision shall be made by an ag-grieved party within fourteen (14) calendar days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within ten (10) calendar days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT-RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).**[**

~~(e) Any party may appeal the "MEDICAL BILL AUDIT RECONSIDERATION DECISION" to the medical director pursuant to Section 17 of this regulation.~~]

Section 19. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on November 9, 2021.

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PUBLIC PROTECTION CABINET
Department of Insurance
Division of Financial Standards and Examinations
(As Amended at ARRS, November 9, 2021)

806 KAR 11:020. Multiple employer welfare arrangements.

RELATES TO: KRS ***304.1-050,*** 304.1-120, ***[~~304.1-050,~~]***304, 304.2-160, 304.2-165 304.5-040, 304.9-020, 304.9-051, 304.11-030, 304.11-045, ***304.17A-005(22), 304.17A-410(7), 304.17A-600, 304.17A-633, 304.17A-802, 304.17A-812,*** 304.99-020, ***[~~304.17A-005(22), 304.17A-410(7), 304.17A-600, 304.17A-633, 304.17A-802, 304.17A-812, 304.99-020,~~]***29 U.S.C. §1002(40).

STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes [~~provides~~] ***[that]***the Commissioner [~~Executive Director~~] of Insurance ***to[~~may~~]*** make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the commissioner to ***established[~~prescribe~~]*** the fees charged by the department and the services for which fees shall be charged by administrative regulation. This administrative regulation requires multiple employer welfare arrangements to provide information to the Commissioner [~~Executive Director~~] of Insurance so the Commissioner [~~Executive Director~~] of Insurance can enforce applicable laws. This administrative regulation also identifies the provisions of the Insurance Code that will be applicable to multiple employer welfare arrangements.

Section 1. Definitions.***[~~As used in this administrative regulation:~~]***

(1) "Administrator" ***is[~~has the meaning as~~]*** defined by KRS 304.9-051(1).

(2) "Agent" ***is[~~has the meaning as~~]*** defined by KRS 304.9-020(1).

(3) "Commissioner" [~~"Executive director" means the Executive Director of the Kentucky Office of Insurance~~] is defined by KRS 304.1-050(1).

(4) "Department" is defined by KRS 304.1-050(2).

(5) ***[~~"Doing business"~~]*** [~~has the meaning~~] ***[~~is defined by~~]*** [~~set forth in~~] ***[~~KRS 304.11-030(2).~~***

[~~(6)~~]"Health benefit plan" is defined by KRS 304.17A-005(22).

(6)[~~(7)~~] "Health insurance policy" ***means[~~has the meaning of~~]*** "health benefit plan" as defined by KRS 304.5-040.

(7)[~~(8)~~] "Health insurance stop-loss policy" ***is[~~as~~]*** defined by KRS 304.17A-410(7).

(8)[~~(9)~~][~~(3)~~]***[~~(a)~~]*** "MEWA" [~~means a~~] or "multiple employer welfare arrangement"***:***

(a)[~~, which is any arrangement which is established or maintained for the purpose of offering or providing health care benefits (other than life insurance benefits) to the employees of two (2) or more employers, or to their beneficiaries~~] Is defined by 29 U.S.C. ***[~~§~~]***1002(40)***; and***

[~~.~~](b) [A]***[~~"MEWA"~~]***Does not mean an arrangement under which health care benefits are fully insured by an insurer authorized to do business in Kentucky.

(9)[~~(10)~~] "Person" is defined by KRS 304.1-020.

(10)[~~(11)~~] "Private review agent" is defined by KRS 304.17A-600(11).

Section 2. ***(1) [~~Information to be Provided to the Commissioner Executive Director. (1) Prior to doing business in Kentucky.~~]***A MEWA ***seeking initial registration*** shall file with the commissioner an Application for a Certificate of Registration of a Multiple Employer Welfare Arrangement (MEWA) and obtain registration approval from the commissioner pursuant to Section 4 of this administrative regulation.

(2) A MEWA shall submit an application fee of $500 ***with[~~at~~]*** the ***[~~time of~~]***application.

(3) The application shall include the information required in Section 3 of this administrative regulation.[~~A MEWA now doing business in Kentucky shall, within twenty (20) days after the effective date of this administrative regulation, file with the executive director in writing the information set forth in Section 3 of this administrative regulation. The executive director will then decide which laws apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with applicable laws of Kentucky, the executive director shall take appropriate enforcement action.~~

~~(2) A MEWA not now doing business in Kentucky shall, prior to doing business in Kentucky, file with the executive director the written information set forth in Section 3 of this administrative regulation. The executive director will then decide which laws apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with the applicable laws of Kentucky, the executive director shall take appropriate enforcement action.~~]

Section 3. Written Information to be Filed with the Commissioner [~~Executive Director~~]. The information required to be filed in writing with the commissioner [~~executive director~~] in support of an application for a certificate of registration pursuant to Section 2 of this administrative regulation shall ***include[~~be~~]***[~~is~~]***[~~as follows~~]***:

(1) The employer identification number assigned by the Internal Revenue Service to the MEWA;

(2) A copy of any trust document used by the MEWA;

(3) A copy [~~Copies~~] of any health benefits or life benefits plan documents;

(4) A copy [~~Copies~~] of the most recent [~~all annual~~] Form 5500 and M-1 filing [~~reports~~] made by the MEWA to the United States Department of Labor [(~~Form 5500~~)];

(5) A copy [~~Copies~~] of any audits conducted with respect to the MEWA;

(6) A copy of any [~~Copies of~~] actuarial reports prepared for the MEWA;

(7) A copy [~~Copies~~] of any summary annual reports published for participants in the MEWA;

(8) A copy [~~Copies~~] of any contracts with agents or administrators;

(9) The names of insurers and policy numbers for bonds covering fiduciaries of the MEWA;

(10) A copy [~~Copies~~] of any stop-loss, excess, or reinsurance policies held by the MEWA;

(11) The AM Best rating of the stop-loss insurer issuing a policy to the MEWA;

(12) A list of all Kentucky employers participating in the MEWA, including full mailing addresses;

(13)[(~~12~~)] A list of the names, addresses, official positions, and biographical information of all officers and trustees of the MEWA;

(14)[(~~13~~)] A copy [~~Copies~~] of any marketing materials and rate manuals; and

(15)[(~~14~~)] The total number of employees, dependents, and beneficiaries participating in the MEWA.

Section 4. Issuance of Certificate of Registration.

(1) Upon receipt of an application for a certificate of registration submitted in accordance with Section 2 ***of this administrative regulation*** and the written information submitted in accordance with Section 3 of this administrative regulation, the commissioner shall issue or deny the application. A certificate of registration shall be issued only if the commissioner finds the following conditions are met:

(a) The persons responsible for the conduct of the affairs of the MEWA ***shall be[~~are~~]*** competent, trustworthy, and possess good reputations; and

(b) The MEWA ***shall be[~~is~~]*** financially responsible and ***[~~may~~]***reasonably ***[~~be~~]***expected to meet its obligations to participants and prospective participants. In making this determination the commissioner ***shall[~~may~~]*** consider:

1. The adequacy of working capital;

2. Any agreement with an insurer, a government, or any other organization for insuring the payment of health claims or the provisions for automatic applicability of an alternative coverage in the event of discontinuance of the coverage offered through the MEWA; and

3. Compliance with KRS 304.17A-812***[~~,~~]*** as a guarantee that the financial solvency obligations of the MEWA ***shall[~~will~~]*** be met.

(2) ***A MEWA subject to the jurisdiction of the department shall comply with any applicable requirements of KRS Chapter 304, including KRS 304.17A-600 through 304.17A-633.*** A MEWA that is issued a certificate of registration shall comply with the requirements as ***established in[~~defined by~~]*** KRS 304.17A-600 through 304.17A-633. A MEWA may contract with a registered private review agent that is licensed in Kentucky to fulfill these requirements.

(3) A MEWA that is issued a certificate of registration shall be subject to the commissioner's authority to investigate complaints pursuant to KRS 304.2-160 and ***[~~KRS~~]*** 304.2-165.

Section 5. Renewal of Certificate of Registration.

(1) A MEWA shall annually renew a certificate of registration by submitting:

(a) The application required by Section 2 of this administrative regulation;

(b) The information required by Section 3 of this administrative regulation.

(2) The information required by subsection (1) of this section shall be submitted to the department no later than March 1 of each year.

Section 6.***[~~Responsibility to Exercise Due Diligence.~~***

~~(1) Requirements of an Agent. Prior to engaging in, or assisting any person to engage in, offering health care benefits to an employer or person located in this state, an insurance agent shall perform appropriate due diligence and apply professional judgment to establish that:~~

~~(a) The entity providing the policy is:~~

~~1. A MEWA registered in accordance with Section 4 of this administrative regulation;~~

~~2. An insurer holding a certificate of authority to offer health insurance in this state;~~

~~3. An entity otherwise licensed to offer health insurance in this state; or~~

~~4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11 045; and~~

~~(b) The coverage is as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage.~~

~~(2) Requirements of an Administrator. Prior to entering into any administrative contract to assist any person with administration of health care benefits covering employees of an employer or a person located in this state, an administrator shall carry out appropriate due diligence and apply professional judgment to establish that:~~

~~(a) The entity providing the health care benefits is:~~

~~1. A MEWA registered in accordance with Section 4 of this administrative regulation;~~

~~2. An insurer holding a certificate of authority to offer health insurance in this state;~~

~~3. An entity otherwise licensed to offer health insurance in this state; or~~

~~4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11-045; and~~

~~(b) The coverage is as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage.~~

~~(3) Requirements of an Insurer. Prior to issuing a stop-loss policy for a health insurance policy covering employees, employee dependents, or individuals located in this state, an insurer shall carry out appropriate due diligence and apply professional judgment to establish that:~~

~~(a) The entity providing the health care benefits is:~~

~~1. A MEWA registered in accordance with Section 4 of this administrative regulation;~~

~~2. An insurer holding a certificate of authority to offer health insurance in this state;~~

~~3. An entity otherwise licensed to offer health insurance in this state; or~~

~~4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11-045; and~~

~~(b) The coverage is as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage.~~

~~Section 7. Reporting Requirement.~~

~~(1) An insurance agent, administrator, or insurer shall file a written complaint with the department pursuant to KRS 304.2-160 and KRS 304.2-165 if, as a result of the due diligence requirement in Section 6 of this administrative regulation, the insurance agent, administrator, or insurer knows or has reason to know that:~~

~~(a) A health insurance policy is, or is about to be, offered to the public in this state by an entity that is not permitted to offer health insurance in this state;~~

~~(b) The coverage is not as represented in the marketing documents or other documents provided to potential enrollees explaining the terms of coverage; or~~

~~(c) The health insurance policy has not been filed with, and approved by, the department and is not otherwise exempt~~

~~***from filing requirements.***~~

~~***(2) The written complaint required by subsection 1 of this section shall be filed within fourteen (14) days of discovering activity prohibited by this regulation, determination of improper registration, or otherwise unauthorized business.***~~

~~Section 8.~~] Penalties and Liability.***[~~(1)~~]*** A person who violates Section 2 of this administrative regulation ***shall incur[~~is subject to~~]*** a civil penalty of ***[~~one thousand dollars (~~]***$1,000***[~~)~~]*** for each violation.***[***

~~***(2) An insurance agent, administrator, or insurer that fails to file a written complaint in accordance with Section 7 of this administrative regulation shall be subject to administrative penalties, up to and including revocation, suspension, or civil penalty for each violation pursuant to KRS 304.99-020.***~~***]***

Section 7.[~~Section 9.~~] Exemptions. The provisions of this administrative regulation shall not apply to a self-insured employer organized association group as defined ***by[~~in~~]*** KRS 304.17A-802(10).[~~Effective Date. This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.~~]

Section 8.[~~Section 10.~~] Incorporated by Reference. (1) The following ***material[~~information~~]*** is incorporated by reference:

(a) Application for a Certification of Registration of a MEWA (CoR MEWA Form), 7/2021;

(b) United States Department of Labor Form 5500, 2020;

(c) United States Department of Labor Form M-1, 2020; and

(d) Kentucky Designation of Person to Receive Legal Process (Form 800), 1/2011.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's internet Web site at http://insurance.ky.gov/.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Property and Casualty
(As Amended at ARRS, November 9, 2021)

806 KAR 39:070. Proof of motor vehicle insurance.

RELATES TO: KRS 186.021(3), 186A.040, 186A.042, 186A.095, 304.39-080, 304.39-083, 304.39-085, 304.39-087, 304.39-090, 304.39-117

STATUTORY AUTHORITY: KRS 186.021(3), 304.2-110(1), 304.39-117(1), 304.39-300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.021(3) authorizes[~~requires~~] the commissioner of the Department of Insurance to promulgate an administrative regulation to establish the manner for presenting proof of motor vehicle insurance to a county clerk. KRS 304.2-110(1) and 304.39-300 authorize the commissioner to promulgate administrative regulations necessary for or as an aid to enforce the insurance code. KRS 304.39-117(1) requires the Department of Insurance to promulgate an administrative regulation that establishes the requirements for the proof of insurance that an insurer shall give to an insured. This administrative regulation establishes the requirements for the proof of insurance***,[;]*** the methods for reporting coverage provided for personal motor vehicles insured on a personal lines motor vehicle policy***,[;]*** the methods for presenting proof of motor vehicle insurance to a county clerk or peace officer***,[;]*** and the requirements for notifying the Department of Vehicle Regulation if a binder, contract, or commercial policy of motor vehicle insurance is cancelled or not renewed.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Department" is defined by KRS 304.1-050(2).

(3) "Insurer" means an insurer defined by [~~under~~] KRS 304.1-040.

(4) "Motor vehicle insurance policy" means an insurance contract that provides security covering a motor vehicle required to be registered pursuant to KRS 186.020 and insured pursuant to KRS 186.021 and 304.39-080.

(5) "Person" is defined by KRS 304.1-020.

(6) "Personal lines motor vehicle policy" means an insurance policy, issued by an insurance carrier authorized to do business in the Commonwealth of Kentucky, which insures a personal motor vehicle.

(7) "VIN" means the vehicle identification number of a motor vehicle.

Section 2. Proof of Insurance to be Provided by Insurers. (1) The proof of insurance required by KRS 304.39-117 shall be provided to the insured when a policy is issued, renewed, or amended to include a vehicle. An insurer electing to provide proof of insurance in an electronic format shall provide a printed proof of insurance unless the insured requests to receive proof of insurance in electronic format.

(2) Printed proof of insurance card.

(a) Two (2) copies of the printed proof of insurance card shall be provided for each motor vehicle insured under a motor vehicle insurance policy.

(b) Size and format of the printed proof of insurance card.

1. The printed proof of insurance card shall be:

a. A two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card;

b. A two and one-fourth (2 1/4) inch by seven (7) inch card with a vertical fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card;

c. A four and one-half (4 1/2) inch by three and one-half (3 1/2) inch card with a horizontal fold resulting in a two and one-fourth (2 1/4) inch by three and one-half (3 1/2) inch card; or

d. A substantially similar size to the dimensions established in clauses a. through c. of this subparagraph.

2. The printed insurance card shall be on white paper with black or blue ink.

(3) Proof of insurance in an electronic format.

(a) Proof of insurance in an electronic format shall be downloaded from or transmitted by the insurer or agent to the insured.

(b) Proof of insurance in an electronic format shall not include a photographic copy of a paper insurance card on a portable electronic device.

(4) Mandatory contents of the proof of insurance. In either paper or electronic format, the proof of insurance shall prominently display the following information, in the order listed:

(a) Title: "COMMONWEALTH OF KENTUCKY PROOF OF INSURANCE";

(b) The name of the insurance company and its five (5) digit code number assigned by the National Association of Insurance Commissioners (NAIC), or the name of the Self-Insured Group and the group ID number provided by the department;

(c) The name of the named insured;

(d) The effective date and expiration date of coverage. If the policy is amended to add an identified vehicle midterm, the effective date on the card shall be the effective date of the amendment;

(e) The policy number;

(f) The type of policy:

1. If the policy is a personal lines motor vehicle policy for which premium is reported on the NAIC Annual Statement line 19.1 or 19.2, the insurer shall indicate the policy type as "Personal" or "PL"; or

2. If the policy is a commercial lines motor vehicle policy for which premium is reported on the NAIC Annual Statement line 19.3 or 19.4, the insurer shall indicate the policy type as "Commercial" or "CL"; and

(g) The vehicle or vehicles insured:

1. If the type of policy is personal lines (PL), the year, make, model, and VIN of each motor vehicle; or

2. If the type of policy is commercial lines (CL), and:

a. If the insurance contract covers four (4) or fewer vehicles, the year, make, model, and VIN of each motor vehicle; or

b. If the insurance contract covers five (5) or more motor vehicles, it may state "Fleet" or the insurer may elect to include the year, make, model, and the VIN of each motor vehicle.

(5) Other information to be provided to the insured. The insurer shall:

(a) Include the following information on the proof of insurance if the information required by subsection (4) of this section is not obscured:

1. The insurer's logo;

2. A statement that establishes the procedure for contacting the insurer concerning a claim; and

3. The insurer's address; or

(b) Include the information listed in paragraph (a) of this subsection on a separate document or electronic image provided with the proof of insurance.

(6) An insurer shall ***provide[furnish]*** with the proof of insurance the following information:

(a) Instructions that the insured shall keep a copy of the proof of insurance in each motor vehicle covered by the policy at all times;

(b) Information as to whether or not the policy is a personal lines motor vehicle policy and whether or not the vehicle has been reported as an insured personal motor vehicle;

1. ***If the policy is a personal lines motor vehicle policy and has been reported as an insured personal motor vehicle[If so]***, the insured shall be informed that:

a. The proof of coverage information has been reported electronically to the Department of Vehicle Regulation; and

b. If the VIN does not appear in the database, the insured may be required to present proof of insurance to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal as alternative evidence of proof of coverage; or

2. ***If the policy is not a personal lines motor vehicle policy and has not been reported as an insured personal motor vehicle[If not]***, the insured shall be instructed to present proof of insurance to the county clerk for issuance of a replacement plate, decal, or registration certificate or renewal as evidence of proof of coverage; and

(c) Instructions to compare the VIN appearing on the registration, insurance policy, and proof of insurance to the VIN affixed to the vehicle.

1. If the VIN on the motor vehicle title and registration and the VIN on the motor vehicle do not match, the policyholder shall contact the county clerk to have the title and registration corrected.

2. If the VIN on the proof of insurance and the motor vehicle do not match, the policyholder shall contact the insurer to have the insurance policy and card corrected. The insurer shall provide the name, address, and telephone number of an insurer representative to contact concerning a discrepancy. The telephone number shall be:

a. The phone number of a local agent of the insurer; or

b. A toll-free telephone number of the insurer.

Section 3. Methods of Proving Motor Vehicle Insurance. One (1) of the following methods shall be used to prove that motor vehicle insurance is in effect when registering a motor vehicle:

(1) The VIN ***shall appear[appears]*** as an insured motor vehicle in the Department of Vehicle Regulation's database;

(2) Proof of current insurance in paper or electronic format:

(a) If the database does not list the VIN of a vehicle insured on a personal lines motor vehicle (PL) policy, the proof of coverage shall indicate the proof was effective no more than forty-five (45) days prior to submission to the county clerk; and

(b) The county clerk may require the proof of coverage to be sent directly to the clerk by the agent or company;

(3) A certificate of insurance issued by an insurance agent with a casualty line of authority licensed by Kentucky;

(4) An insurance contract with a declaration page attached showing that the policy is in effect when the motor vehicle is being registered or transferred;

(5) A letter from the Kentucky Automobile Insurance Plan serving as prima facie evidence of insurance in force;

(6) If the owner of the motor vehicle is serving in the armed forces outside Kentucky, an affidavit by the provost marshal of the base where the person is stationed stating that the motor vehicle is covered by an automobile liability insurance policy; or

(7) A letter from the Kentucky Department of Insurance serving as prima facie evidence of self-insurance pursuant to KRS 304.39-080(7).

Section 4. ***Each month[Beginning January 1, 2006, and each month thereafter]***, an insurer shall submit information on each vehicle covered by a personal lines motor vehicle policy according to the rules contained in Section 2.1 of the Kentucky Automobile Liability Insurance Reporting Guide.

Section 5. For motor vehicles insured under a commercial lines or fleet policy, each insurer shall report cancellations pursuant to Part 2.2 of the Kentucky Automobile Liability Insurance Reporting Guide.[

~~Section 6. An insurance agent shall submit to the Department of Vehicle Regulation a completed Form TC96-30 if the purchaser of a binder or temporary insurance contract cancels the binder or contract before the agent has submitted the application to the insurance company.~~]

Section 6.[~~Section 7.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Automobile Liability Insurance Reporting Guide", Transportation Cabinet, Department of Vehicle Regulation, Version 1.6, 8/15/2005 [~~(Version 1.6, 8/15/2005 edition); and~~

~~(b) "Form No. TC 96-30, Motor Vehicle Insurance Agent Insurance Binder Cancellation Form (5/05 edition)", Kentucky Transportation Cabinet, Department of Motor Vehicle Regulation.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, The Mayo-Underwood Building, 500 Mero Street [~~Vehicle Regulation, P. O. Box 2014, 200 Mero Street,~~] Frankfort, Kentucky 40601[~~40622~~], Monday through Friday, 8 a.m. to 4:30 p.m. [~~The material may also be obtained at the Transportation Cabinet Web site: http://transportation.ky.gov/mvl/home.htm.~~] The material may also be obtained at the Department of Insurance Web site: http://insurance.ky.gov.

CONTACT PERSON: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(As Amended at ARRS, November 9, 2021)

815 KAR 4:025. Permit and inspection fees for new and altered elevators, chairlifts, fixed guideway systems, and platform lifts.

RELATES TO: KRS 198B.050, 198B.400-198B.540

STATUTORY AUTHORITY: KRS 198B.060, 198B.4009, 198B.490, 198B.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.420 requires the Department of Housing, Buildings and Construction to administer all aspects of the State Elevator and Fixed Guideway System Inspection Program. KRS 198B.520 requires a permit to be obtained prior to the construction, installation, or alteration of an elevator or fixed guideway system. KRS 198B.490 requires the department to promulgate administrative regulations governing the safety and inspection of

elevators and fixed guideway systems and authorizes the department to ***establish[~~prescribe~~]*** reasonable fees to be charged for each inspection. KRS 198B.060(18) authorizes the department to establish a schedule of fees for the functions performed under KRS Chapter 198B.[~~KRS 198B.490 authorizes the Commissioner of the Department of Housing, Buildings and Construction to make inspections and prescribe the associated fees to be charged for each elevator, chairlifts, and platform lifts constructed, installed, or altered within the Commonwealth.~~] This administrative regulation establishes the permit [~~permitting~~] and inspection fees for passenger elevators, freight elevators, [~~and initial installation fees for~~] chairlifts, fixed guideway systems, and platform lifts.

Section 1. Definitions. (1) "Alteration"***:***

(a) Means a change that***[~~:~~***

~~(a)~~] is made to an elevator, elevator equipment, elevator device, chairlift, fixed guideway system or platform lift; and

(b) Does not ***mean[~~include~~]*** maintenance, repair, or replacement of parts in kind.

(2) "Elevator" is defined by KRS 198B.400(1).

(3) "Fixed guideway system" is defined by KRS 198B.400(11).

Section 2. Issuance of Permits. (1) Permits to construct, install, or alter an elevator, chairlift, fixed guideway system, or platform lift shall only be issued to a Kentucky licensed elevator contractor.

(2) A Kentucky licensed elevator mechanic shall not construct, install, or alter an elevator, chairlift, fixed guideway system, or platform lift unless the work is performed under the supervision of a Kentucky licensed elevator contractor or exempt from supervision under the provisions of KRS 198B.4009(2).

Section 3. Permit Required. (1) An application shall be made for a permit prior to construction, installation, or alteration of an elevator, chairlift, fixed guideway system, or platform lift on one (1) of the following:

(a) Form EV-1, Elevator Construction and Installation Permit Application; or

(b) Form EV-2, Elevator Alteration Permit Application.

(2) An application shall be submitted to the department[~~Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Elevator section~~] before commencing elevator, chairlift, fixed guideway system, or platform lift work ***that[~~which~~]*** requires[~~requiring~~] a permit.

Section 4. [~~Passenger Elevator~~] Construction, Installation, and Alteration Permit Fees. Permit and inspection fees for passenger elevators, freight elevators, chairlifts, fixed guideway systems, and platform lifts shall be as follows:

Horsepower (per unit)	Permit Fee
Zero (0) to five (5)	$85
Six (6) to ten (10)	$100
More than ten (10)	$100 plus $10 for each additional horsepower exceeding ten (10)

Section 5. [~~Freight Elevator Construction, Installation, and Alteration Permit Fees. Permit and inspection fees for freight elevators shall be as follows:~~

~~Horsepower (per unit)~~	~~Permit Fee~~
~~Zero (0) to five (5)~~	~~$85~~
~~Six (6) to ten (10)~~	~~$100~~
~~More than ten (10)~~	~~$100 plus $10 for each additional horsepower exceeding ten (10)~~

~~Section 6.~~] Inspection Fees. (1)(a) Each passenger elevator, freight elevator, chairlift, fixed guideway system, or platform lift permit shall include up to two (2) inspections [~~(one (1) final and one (1) supplemental, if necessary)~~] at no additional cost.

(b) All passenger elevator, freight elevator, chairlift, fixed guideway system, or platform lift inspections in excess of the two (2) provided with the purchase of the permit shall be performed at the rate of the original permit fee per inspection.

(2)[~~(a) Each freight elevator permit shall include two (2) inspections (one (1) final and one (1) supplemental) at no additional cost.~~

~~(b) All freight elevator inspections in excess of the two (2) provided with the purchase of the permit shall be performed at the rate of the original permit fee per inspection.~~

~~(3) The inspection fee for a newly installed or altered chairlift or platform lift shall be eighty-five (85) dollars for the first two (2) inspection and eighty-five (85) dollars per each additional inspection required prior to approval of the installation or alteration.~~

~~(4)~~] Payment for all necessary permits and inspections shall be received by the department[~~the elevator section~~] prior to final approval of an elevator, chairlift, fixed guideway system, or platform lift construction, installation, or alteration being granted.

Section 6. Elevator Inspection Checklist. Prior to requesting a final inspection of the constructed, installed, or altered elevator, the elevator contractor shall submit a completed Elevator Inspection Violation Reference List for New and Existing Elevator Devices and Scheduling Checklist, Form EV-3, to the department.

Section 7. Certificate of Approval. Upon the satisfactory completion of final inspection of the constructed, installed, or altered elevator, chairlift, fixed guideway system, or platform lift a certificate of approval shall be issued by the department.

Section 8. Expiration of Permits. An elevator permit issued pursuant to this administrative regulation shall be subject to revocation, expiration, or extension pursuant to the provisions of KRS 198B.520.

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

(a) "Elevator Construction and Installation Permit Application", Form EV-1, May 2020; and

(b) "Elevator Alteration Permit Application", Form EV-2, May 2020.

(c) "Elevator Inspection Violation Reference List for New and Existing Elevator Devices and Scheduling Checklist", Form EV-3, May 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Housing, Buildings[,] and Construction; 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
(As Amended at ARRS, November 9, 2021)

815 KAR 7:080. Licensing of fire protection sprinkler contractors.

RELATES TO: KRS 198B.550 - 198B.630

STATUTORY AUTHORITY: KRS 198B.555

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.555 requires the commissioner[~~Commissioner~~] of the Department of Housing, Buildings and Construction to promulgate[~~adopt~~] reasonable administrative regulations necessary for the administration of KRS 198B.550 ***through[~~to~~]*** 198B.630[~~a Fire Protection Sprinkler Contractor's Law~~]. This administrative regulation establishes the qualifications, responsibilities, procedures, and fees for licensing fire protection sprinkler contractors and for certifying certificate of competency holders[~~those contractors. This amendment is necessary to increase contractor licensing and certificate of competency fees to support the program. These fees have not been increased since the program was established in 1984~~].

Section 1. Definitions. (1) "Department"["Office"] is defined ***by[in]*** KRS 198B.550(1).

(2) "Certificate of competency" means the certificate of registration issued by the department[office] to an individual who demonstrates competency to design fire suppression systems by successfully completing the minimum requirements of ***this[the]***[this] administrative regulation.

(3) "Certificate holder" is defined ***by[in]*** KRS 198B.550(5).

(4) Commissioner["Executive Director"] is defined ***by[in]*** KRS 198B.550(2).

(5) "Fire protection sprinkler contractor" is defined ***by[in]*** KRS 198B.550(3).

(6) "Fire protection sprinkler system" is defined ***by[in]*** KRS 198B.550(6).

(7) "Inspection" means a physical and visual examination of a sprinkler system installation.

(8) "Installation" means the initial placement of a system or its extension or alteration after initial placement.[

(9) "NICET" is defined in KRS 198B.570.]

Section 2. Responsibilities of the Commissioner[Executive Director]. The commissioner [executive director] shall review applications, accept fees**,** and issue certificates and licenses to qualified persons and firms pursuant to this administrative regulation. He or she shall conduct investigations upon receipt of written complaints ***that[which]*** allege that a certificate holder or licensed fire protection sprinkler contractor has acted in violation of KRS Chapter 198B or of this administrative regulation.

Section 3. Applicability. Except as exempted by KRS 198B.560, this administrative regulation shall apply to all firms and persons who engage in the business of design and preparation of technical drawings, installation, repair, alteration, extension, maintenance**,** or inspection of a fire protection sprinkler system.

Section 4. Application for Certificate of Competency. (1) An applicant for certificate of competency shall comply with the examination requirements in KRS 198B.570 for the type of system for which the applicant seeks certification.

(2) An applicant[Application] for a fire protection sprinkler system certificate of competency shall submit to the department:[be submitted on Forms FPS-SC-2 and 2a.]

(a) Completed forms FPS-SC-2 and 2a;

(b) Proof of current National Institute for Certificate in Engineering Technologies (NICET) certification in fire protection engineering technology automatic sprinkler system design, level III, or higher; and

(c) A nonrefundable, prorated certificate fee of $125.

(3) An applicant[Application] for a range hood suppression system certificate of competency shall submit to the department:

(a) Completed[Be submitted on] Forms FPS-RC-2 and 2a;

(b) Proof of[Included] current manufacturer's training certification; and[.]

(c) A nonrefundable, prorated certificate fee of $125.

(4) Application for a chemical system certificate of competency shall be as ***established in paragraphs (a) and (b) of this subsection.[follows:]***

(a) An applicant for a pre-engineered[For preengineered] chemical systems (limited) certificate of competency shall submit to the department:

1. Completed[Submit application on] Forms FPS-CC-2 and 2a;

2. Proof of[Include] current manufacturer's training certification; and

3. A nonrefundable, prorated certificate fee of $125.

(b) An applicant for[For] an engineer chemical systems (unlimited) certificate of competency shall submit to the department:

1. Completed[Submit application on] Forms FPS-CC-2 and 2a;

2. Proof of[Include] current NICET certification in special hazard systems layout technician, level III; and

3. A nonrefundable, prorated certificate fee of $125.

Section 5. Application for [Licensed Fire Protection Sprinkler] Contractor's License[Contractors]. (1) An applicant for a contractor's license[for licensure] shall submit to the department:

(a)***1.*** Proof of having[Have] a certificate holder in his or her employ; and

2.[(b)] Proof[Show proof] of financial responsibility as required by KRS 198B.595.[

(2) Application shall be made as follows:]

(b)[(c)][(a)] For fire protection sprinkler contractors, a completed[contractor on] Form FPS-SL-1;

(c)[(d)][(b)] For rangehood suppression system contractors, a completed[contractor on] Form FPS-RL-1; ***and***

(d)[(e)][(c)] For chemical suppression system contractors a completed[on] Form FPS-CL-1.

(3)(a) Each application shall be accompanied by a fee of $250***.[;]***

(b) The initial license fee shall be prorated [on a quarterly basis upon the first renewal].

Section 6. Certificate Holder Seal. Each certificate holder shall obtain and use a seal for all work prepared by him or her or under his or her direct supervision. The design shall be as follows:

Section 7. Certification and Licensure.

(1) Upon completion of the requirements of KRS 198B.595, the certificate of competency shall be issued by the commissioner [executive director] in the name of the [certificate holder] applicant.

(2) All fire protection sprinkler contractor licenses shall be issued in the name of the firm listed on the application and shall state the name of the certificate holder on the face of the license.

(3) Each license and certificate shall expire on the last day of the licensee or certificate holder's birth month[June 30 of each year].

(4) To renew[Renewal of] a certificate of competency, a certificate holder shall submit to the department[be submitted]:

(a) The completed applicable form[Using the appropriate application forms] listed in Section 4(1)(a)-(c) of this administrative regulation; and

(b) A renewal fee of ***$125[$250]***[$125] for each certificate.

(5) To renew[Renewal of] a contractor's license, a licensee shall submit to the department[be submitted]:

(a) The completed applicable form[Using the appropriate application forms] listed in Section 5(2)(a) ***through[-]***(c) of this administrative regulation; and

(b) A renewal fee of $250 for each license.

Section 8. Duties and Responsibilities of a Licensed Contractor and [a] Certificate Holder. (1) A person shall not represent himself as a fire protection sprinkler contractor without first being licensed by the department[office] in accordance with this administrative regulation.

(2) The design of a system shall be prepared [and submitted] by either a licensed professional engineer or a licensed fire protection sprinkler contractor as required by KRS 198B.565.

(3) A person other than a certificate holder shall not engage in any activity listed in Section 3(1) of this administrative regulation unless he ***or she*** is supervised by or has in his ***or her*** employ**,** a lawfully authorized certificate holder.

Section 9. Procedures for Administrative Disciplinary Hearings. Disciplinary action authorized by KRS 198B.620 shall ***be conducted as established in subsections (1) and (2) of this section.[conform to the following procedures:]***

(1) Upon receipt of a written complaint that a licensee or certificate holder has engaged in any prohibited behavior or failed to satisfy ***[his]***responsibilities as ***established[set forth]*** in this administrative regulation, the commissioner[executive director]

shall cause an investigation to be made of the matter.

(2) If the commissioner[~~executive director~~] determines that there is reason[~~probable cause~~] to believe the violations[~~charges~~] alleged, the commissioner[~~executive director~~] shall conduct a hearing in accordance with KRS Chapter 13B.

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

(a) Form FPS-SC-2 and 2a, Application for Certificate of Competency; Fire Protection Sprinkler Systems, May 2021[~~,2001~~];

(b) Form FPS-SL-1, Application for Contractor License; Fire Protection Sprinkler Systems, May, 2001;

(c) Form FPS-RC-2 and 2a, Application for Certificate of Competency; Fire Protection Rangehood, May 2021[~~2001~~];

(d) Form FPS-RL-1, Application for Contractor License; Fire Protection Rangehood, May 2001;

(e) Form FPS-CC-2 and 2a, Application for Certificate of Competency; Fire Protection Chemical, May, 2021[~~2001~~]; and

(f) Form FPS-CL-1, Application for Contractor License; Fire Protection Chemical, May, 2001.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[~~Office~~] of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(As Amended at ARRS, November 9, 2021)

815 KAR 7:110. Criteria for expanded local jurisdiction.

RELATES TO: KRS 67A, 67C, 82.105(1), 83, 83A, 198B.040(7), 198B.050, 198B.060, 198B.070, 212.626(5), 227.489

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(5), (6), (18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.060(5) and (6) authorize a local government to petition the commissioner to request additional plan review and inspection functions. This administrative regulation establishes the requirements for local governments to request and be granted expanded jurisdiction for building code plan review and inspection.

Section 1. Definitions. (1) "Local governing body" means the chief governing body of a city, county, consolidated local government, or urban-county having legislative powers.

(2) "Local government" means:

(a) A city, as established by KRS Chapters 67A, 67C, 83, and 83A;

(b) A county, as defined by KRS 212.626(5);

(c) A consolidated local government; or

(d) An urban-county government.

Section 2. Uniform Criteria for Granting Expanded Jurisdiction. (1) Inspector requirements. A local government shall employ or execute a ***legal[local]***[~~legal~~] contract with at least one (1):

(a) Individual certified as a building inspector, level III, in accordance with 815 KAR 7:070. The building inspector, level III, shall be responsible for reviewing plans, reviewing specifications, and performing building inspections; and

(b) Certified electrical inspector in accordance with KRS 227.489 and 815 KAR 35:015. The certified electrical inspector shall enforce the National Electrical[~~Electric~~] Code (NFPA 70) as adopted and incorporated into the Kentucky Building Code***, 815 KAR 7:120,*** and Kentucky Residential Code***, 815 KAR 7:125***.

(2) Record retention.

(a) The local government shall be responsible for maintaining all records in compliance with the department's record retention schedule in accordance with 725 KAR 1:061.

(b) If the local government contracts with a person, firm, or company to perform plan ***and[ad]***[~~and~~] specification inspections or building inspection functions pursuant to KRS 198B.060(15), the local government shall be responsible for the records produced by the person, firm, or company in compliance with paragraph (a) of this subsection.

(3) Minimum jurisdiction responsibilities. The local government shall maintain the minimum responsibilities required by KRS 198B.060(2), unless additional responsibilities are specifically agreed upon in writing between the local government and the department pursuant to KRS 198B.060(5) and this administrative regulation.

(4) State jurisdiction. The department shall retain plan review, inspection, and enforcement responsibility pursuant to the Kentucky Building Code, 815 KAR 7:120, for all buildings that are:

(a) Institutional buildings;

(b) Educational buildings, unless specifically agreed ***otherwise*** in writing by the local government and the department;

(c) Licensed facilities as mandated by the Cabinet for Health and Family Services, including day care centers, hospitals, and nursing homes;

(d) State-owned and state-leased buildings and facilities;

(e) High-hazard occupancies, unless specifically agreed ***otherwise*** in writing by the local government and the department; and

(f) Industrialized building systems (including modular homes), except for site placement and assembly of individual modular homes. A local government may permit placement and assembly locally. Local placement and assembly shall not commence until the local government submits written notification to the department for each placement.

Section 3. Application for Expanded Jurisdiction. (1) Application. An authorized representative of a local government shall submit to the department:

(a) A completed Application for Local Expanded Jurisdiction, Form BCE/EJ #1;

(b) An affidavit certifying the local government employs or contracts with a certified building inspector, level III, and a certified electrical inspector***[,]*** and the name and job title for each inspector;

(c) A complete list of code enforcement personnel employed by or contracted with the local government, including the name, job title, and certification status of each individual;

(d) Documentation of all permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity if granted expanded jurisdictional authority;

(e) A complete list of each:

1. Building occupancy, classification, and size for which expanded jurisdiction is requested; and

2. Building occupancy, classification, and size for which expanded jurisdiction is not requested;

(f) A copy of the local ordinance requiring single-family dwelling plan review and inspection within the jurisdiction;

(g) A copy of the schedule of relevant fees adopted by the local governing body;

(h) A copy of any agreement between the applicant and another local government pursuant to KRS 198B.060(14); and

(i) A copy of any agreement between the applicant and any person, firm, or company to perform plan and specification inspections or building inspection functions pursuant to KRS 198B.060(15).

(2) Expanded jurisdiction agreement.

(a) If the application is approved by the department, the department and the local government shall enter into an expanded jurisdiction agreement.

(b) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless:

1. Canceled by one or both parties in writing; or

2. Preempted in whole or in part pursuant to subsection (1) of this section.

(c) The local government shall notify the department within thirty (30) days of any changes in personnel or fees that differ from the terms of the agreement.

Section 4. Procedures for Maintaining Expanded Jurisdiction. (1) Renewal. Before the expiration of the agreement, the local jurisdiction shall submit a Renewal Application for Expanded Jurisdiction on Form BCE/EJ #2. The renewal application shall include the submissions required by Section 3 of this administrative regulation.

(2) Renewal application review. After receiving and reviewing the local government's application for renewal, the department shall:

(a) Reevaluate the building code enforcement program of the local government; and

(b) Renew the local government's expanded jurisdiction agreement or deny the renewal request within forty-five (45) days of receiving the local program's renewal application and supporting documentation.

(3) Expanded jurisdiction monitoring. The department shall monitor the program of each local government granted expanded jurisdiction responsibilities. If a local government violates the requirements of this administrative regulation***;[,]*** the Kentucky Building Code, 815 KAR 7:120***;[,]*** the Kentucky Residential Code, 815 KAR 7:125***;[,]*** the terms of the expanded jurisdiction agreement***;[,]*** or KRS Chapters 198B, 236, or 318, the ***department may preempt the*** local government***[shall be subject to preemption]***, in whole or in part***[, by the department]***.

(4) The department shall retain plan review, inspection, and enforcement responsibility pursuant to the Kentucky Building Code, 815 KAR 7:120, for all buildings as ***established[specified]*** in the [original] agreement for expanded local jurisdiction with the local government.

Section 5. Local Appeals Board. (1) The local government with expanded jurisdiction may establish a local appeals board. A local appeals board shall operate in accordance with KRS 198B.070.

(2) If the local government establishes a local appeals board, the local government shall send a written notice to the department, which shall:

(a) Identify each member by name and qualifications for being appointed to the appeals board; and

(b) Include contact information for the local appeals board.

(3) If a local appeals board is not established, all costs incurred by the department to conduct hearings for appeals filed pursuant to KRS 198B.070(5) shall be charged to the local government.

Section 6. One (1) and Two (2) Family Dwellings. (1) The local building inspection program shall not include the plan review and inspection for one (1) and two (2) family dwellings that are:

(a) Manufactured homes;

(b) Modular homes; or

(c) Farm dwellings.

(2) The local building inspection program shall include permits and inspections for the foundation system and other on-site construction related to modular home installations.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Local Expanded Jurisdiction", Form BCE/EJ #1, May 2018; and

(b) "Renewal Application for Expanded Jurisdiction", Form BCE/EJ #2, May 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, Monday Through Friday, 8 a.m. to 4:30 p.m. and is available online at dhbc.ky.gov.

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Fire Prevention
(As Amended at ARRS, November 9, 2021)

815 KAR 10:060. Kentucky standards of safety.

RELATES TO: KRS ***198B.050,***[198B.110,] 227.300, 227.320, 227.330, ***227.331,*** 227.990, 234.140***[, 198B.050]***

STATUTORY AUTHORITY: KRS 227.300(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.300(1) requires[authorizes] the commissioner to promulgate an administrative regulation establishing the Kentucky Standards of Safety, which shall provide a reasonable degree of safety for human life against the exigencies of fire and panic and insuring as far as practicable against fire loss. This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, ***[promulgated as]*** 815 KAR 7:120, in matters of fire safety.

Section 1. Definitions. (1) "Accepted" means that all deficiencies communicated, in writing, to the owner have been corrected to the satisfaction of the inspecting authority.

(2) "Distinct fire hazard"***:***

(a) Means a condition that poses a threat to life or property, including a condition likely to inhibit escape from danger of fire or explosion***; and***

(b) Does not mean a condition in which the[, but] methods of construction ***[that]***met the uniform state building code requirements, as applicable, at the time of construction***.[shall not be deemed a distinct fire hazard. A building shall be deemed a distinct fire hazard if the authority having jurisdiction determines:***

(a) A fire, explosion, or asphyxiation is likely to occur;

(b) Conditions may provide a ready fuel supply to augment the spread or intensity of a fire or explosion;

(c) A building is vacant, unguarded and open to unauthorized entry;

(d) An accumulation of combustible dust, debris, or materials is present;

(e) Required exits or fire protection are in non-working condition or not present;

(f) Objects [are] placed or installed so as to interfere with exits or exit routes;

(g) Combustible materials or items are in dangerous proximity to an ignition source such as a stove, fireplace, or heater;

(h) Electrical or mechanical systems or installations create a hazardous condition; or

(i) Operations, conditions, processes, use, or materials being used fail to afford adequate safety to the public.][Methods of construction that met the uniform state building code requirements, as applicable, at the time of construction shall not be deemed a distinct fire hazard.]

(3) "Fire protection system" is defined by KRS 198B.550(6).

(4) "NFPA" means the National Fire Protection Association.

(5) "NICET" means the National Institute for Certification of Engineering Technologies.

(6) "Unsafe Building" means a building characterized by:

(a) Deficiency in means of egress;

(b) Danger to human life or public welfare by reason of illegal or improper use, occupancy, or maintenance;

(c) Non-compliance with the construction codes in place at time of construction;

(d) Significant damage including as the result of:

1. Fire;

2. Explosion;

3. Natural disaster;

4. Neglect; or

5. Vandalism;

(e) Falling away, hanging loose, or loosening of siding, block, or other building material, appurtenance, or part thereof; or

(f) Existence of structurally unsafe conditions.

Section 2. Scope. (1) Applicability. This administrative regulation shall apply to all buildings except one (1) and two (2) family dwellings.

(2) Enforcement.

(a) State Fire Marshal. The State Fire Marshal shall:

1. Have primary jurisdiction over all property, unless a local government has established a fire inspection program by ordinance adopting this administrative regulation pursuant to KRS 227.320; and

2. Have exclusive jurisdiction over state-owned property. [~~and primary jurisdiction for code compliance for health care facilities and other facilities licensed by the Kentucky Cabinet for Health and Family Services.~~]

(b) Local fire chief. Jurisdictions wherein a local fire chief is designated by ordinance to operate a fire inspection program pursuant to KRS 227.320 shall have primary jurisdiction for the enforcement of all property within the local governmental boundary except as ***established[~~provided~~]*** in subparagraph (a)2. of this subsection.

Section 3. Existing Buildings and Conditions. (1) The standards for the construction pursuant to 815 KAR 7:120, Kentucky Building Code, in effect at the time of construction, and for which there has been issued a lawful certificate of occupancy, shall supersede different construction standards regarding the requirements for egress facilities, fire protection, and built-in fire protection equipment established in this administrative regulation or conflicting local ordinances.

(2) Change of use. It shall be unlawful to make a change in the use of a building or portion thereof without project plan review and approval in accordance with 815 KAR 7:120, Kentucky Building Code, except as ***established[~~specified~~]*** in Chapter 34 therein.

(3) Buildings and conditions approved under other codes.

(a) Buildings constructed prior to promulgation of the uniform state building code. A building, or portion thereof, which was constructed and approved prior to the effective date of the uniform state building code shall be maintained as constructed and approved.

(b) Previous fire code. A building, or portion thereof, which was inspected, approved, or accepted pursuant to a previously adopted fire code[~~the 1996 Kentucky Fire Prevention Code~~] shall:

1. Be maintained as previously approved or accepted; and

2. Not be required to make a modification or change for so long as the building is maintained and used as previously accepted or approved.

(c) Buildings not occupied or used for one (1) year or more. Prior to occupancy, a building shall be ***inspected[~~subject to safety inspection~~]*** by the State Fire Marshal or ***a[~~his~~]*** designee to ensure that the structure is neither a distinct fire hazard ***nor[~~or~~]*** an unsafe structure.

(4) Distinct Fire Hazards.

(a) ***A building shall be deemed a distinct fire hazard if the authority having jurisdiction determines:***

1. A fire, explosion, or asphyxiation is likely to occur;

2. Conditions might provide a ready fuel supply to augment the spread or intensity of a fire or explosion;

3. A building is vacant, unguarded, and open to unauthorized entry;

4. An accumulation of combustible dust, debris, or materials is present;

5. Required exits or fire protection are in non-working condition or not present;

6. Objects are placed or installed so as to interfere with exits or exit routes;

7. Combustible materials or items are in dangerous proximity to an ignition source such as a stove, fireplace, or heater;

8. Electrical or mechanical systems or installations create a hazardous condition; or

9. Operations, conditions, processes, use, or materials being used fail to afford adequate safety to the public.

(b) If the State Fire Marshal or local fire chief determines that a distinct fire hazard exists, the fire hazard shall be remedied so as to render the property safe.

(c)[~~(b)~~] The State Fire Marshal or a local fire chief shall use the standards ***established[~~specified~~]*** in this administrative regulation[~~paragraph~~] to identify and to order the correction of a distinct fire hazard acting in accordance with the procedures established in KRS Chapter 227 and [~~Section 5 of~~] this administrative regulation. In exercising authority granted, the following shall be applicable:

1. NFPA 1, Uniform Fire Code, 2018[~~2012~~] edition, and the NFPA referenced standards included in Chapter 2 of NFPA 1 except:

a. NFPA 403[~~402~~], Guide for Aircraft Rescue and Fire Fighting Operation, 2018[~~2002~~] edition;

b. [~~NFPA 472, Standard for Professional Competence of Responders to Hazardous Materials Incidents, 2002 edition;~~

~~c.~~] NFPA 1031, Standard for Professional[~~Profession~~] Qualifications for Fire Inspectors and Plan Examiner, 2014[~~2003~~] edition;

c. NFPA 1192, Standard on Recreational Vehicles, 2018 edition;

d. NFPA 1194, Standard for Recreational Vehicle Parks and Campgrounds, 2018 edition;

e. NFPA 1901, Standard for Automotive Fire Apparatus, 2016 edition;

f. NFPA 1906, Standard for Wildland Fire Apparatus, 2016 edition;

g. NFPA 1925, Standard on Marine Fire-Fighting Vessels, 2013 edition;

h. NFPA 1963, Standard for Fire Hose Connections, 2014 edition;

i. NFPA 2113, Standard on Selection, Care, Use, and Maintenance of Flame-Resistant Garments for Protection of Industrial Personnel Against Short-Duration Thermal Exposures from Fire, 2015 edition;

j[~~d~~]. NFPA 5000, Building Construction and Safety Code, 2018[~~2012~~], edition;

k. Code reference 1.7.2, Minimum Qualifications to Enforce this Code;

l. Code reference 10.2.7, Minimum Fire Prevention Inspection Frequencies for Existing Occupancies;

m[~~e~~]. Code reference 13.3.2.26, High Rise Buildings;

n[~~f~~]. Code reference 13.3.2.8, Existing Assembly Occupancies; and

o[~~g~~]. Code reference 13.6, Portable Extinguishers, which if required, shall be modified to exclude the provisions for installation of portable extinguishers in the occupancies listed in Table 13.6. Portable extinguishers shall be installed as required in the occupancy chapters of NFPA 101, Life Safety Code, 2018[~~2012~~] Edition;

2. NFPA 101, Life Safety Code, 2018[~~2012~~] edition, and the NFPA referenced standards included in Chapter 2 of NFPA 101 except Code reference 13.3.5;

3. NFPA 70, National Electrical Code[~~®~~], 2017[~~2011~~] Edition; and

4. 815 KAR 7:120, Kentucky Building Code.

(d)[~~(c)~~] Modifications, alternatives, and interpretations. If the State Fire Marshal accepts or approves an alternative to a code provision or issues an interpretation and the alternative or interpretation is of general applicability, it shall be published and forwarded to all known fire inspectors and other persons requesting a copy.

(5) Abatement of fire hazards. The abatement of a distinct fire hazard pursuant to this administrative regulation shall not require construction measures that would exceed the requirements of the current edition of 815 KAR 7:120, Kentucky Building Code, if the building were being newly constructed.

(6) Maintenance of equipment.

(a) All fire suppression and fire protection equipment, systems, devices, and safeguards shall be maintained in accordance with the applicable NFPA referenced code and the manufacturer's recommendations.

(b) This administrative regulation shall not be the basis for removal or abrogation of a fire protection or safety system or device installed in a building without approval granted by the authority having jurisdiction.

(7) Cooperation with building official. The State Fire Marshal and the local fire chief shall coordinate and cooperate with the building code official having jurisdiction in assessing a building for relative fire safety and to assure that the proper standards are applied.

Section 4. Permits. (1) State permits required. A permit shall be required from the State Fire Marshal for flammable, combustible, or[~~and~~] hazardous material storage vessel installations.

(2) Local permits allowed.

(a) A permit from a local government shall not be required unless required by local ordinance.

(b) An inspection or permit fee, if applicable, shall be established within the local ***government*** adopting legislation.

Section 5. Enforcement of Violations. (1) Notice of deficiency. If the State Fire Marshal or local fire chief observes an apparent violation of a provision of this administrative regulation [~~and the standards incorporated herein~~] or other codes or ordinances under state or local jurisdiction, the State Fire Marshal or local fire chief shall prepare a written notice of deficiency. The notice of deficiency shall state the applicable code provision violated and specify the date by which the required repairs or improvements shall be completed. Pursuant to KRS 227.336, corrective action shall be ordered remedied within a period of time not to exceed sixty (60) days.***[~~The State Fire Marshal may grant extensions to the compliance date upon receipt of a written plan of a correction stating the dates of completion of each violation and a reason for the delay. The plan of correction must be received before the end of the first sixty (60) day period.~~]***

(2) Services[~~Service~~] of notice. The written notice of deficiency shall be served personally or via certified U.S. Mail upon the owner or the owner's duly authorized agent and upon each other person responsible for the deficiency. Proof of service shall be required to perfect service.

(3) ***The State Fire Marshal shall commence enforcement action authorized in KRS 227.331 against any person who fails to correct a deficiency ordered to be remedied[~~Failure to correct deficiency. Any person who fails to correct a deficiency ordered to be remedied shall be subject to enforcement actions authorized in KRS 227.331~~]***.

Section 6. Means of Appeal. (1) Appeals of orders issued by the State Fire Marshal.

(a) An appeal to the State Fire Marshal from a notice of deficiency issued by the Division of Fire Prevention shall be:

1. In writing; and

2. Received by the Division of Fire Prevention, State Fire Marshal prior to the completion date specified in the notice of deficiency served.

(b) If the matter is not resolved by agreement of the affected parties and the State Fire Marshal, legal action shall be instituted pursuant to KRS Chapter 227.

(2) Appeal of an order to remedy. Pursuant to KRS 227.380, the owner of the subject property may appeal to the State Fire Marshal within ten (10) days following receipt of the issued order.

Section 7. Special Provisions. (1) Fire incident reporting. The fire chief or highest ranking fire department officer may request investigative assistance from the State Fire Marshal.[~~shall promptly notify the State Fire Marshal upon becoming aware of any of the following:~~

~~(a) A hazardous materials incident;~~

~~(b) Fire-related fatality (including a vehicle or home);~~

~~(c) Fire-related injury serious enough to become a fatality; or~~

~~(d) A fire involving major structural damage in the following buildings:~~

~~1. An institutional, educational, state-owned or state-leased, or high-hazard occupancy;~~

~~2. A business, mercantile, or industrial occupancy having a capacity over 100 persons;~~

~~3. An assembly occupancy having a capacity over 100 persons;~~

~~4. A place of religious worship with a capacity over 400 persons and more than 6,000 square feet; or~~

~~5. Any other building more than three (3) stories in height or 20,000 square feet of floor area.~~]

(2) Fire protection systems testing and inspection.

(a) Reporting. Except as ***established[~~provided~~]*** in paragraph (c) of this subsection, an inspection ***or[~~nor~~]***[~~or~~] test required by this administrative regulation, Chapter 11, 13, or 20 of the NFPA 1, Uniform Fire Code shall be conducted and reported to the owner by a person authorized or certified by the department[~~State Fire Marshal~~].

(b) Inspection and test reports.

1. A required inspection or test shall be recorded on the applicable form contained in NFPA 25 or NFPA 72[~~as determined by the State Fire Marshal~~].

2. [~~If any violations are noted, the~~] The completed report shall be given to the owner and a copy shall be forwarded to the local fire chief or highest ranking fire department officer[~~State Fire Marshal~~] within ten (10) working days of the date of the inspection.

(c) Reporting exceptions.

1. Portable fire extinguishers and single station smoke detectors may be inspected and tested by the property owner or the property owner's agent.

2. Allowable reports by owners and owner agents shall not be required to be filed with the State Fire Marshal, but shall be kept on file within the building and available for review upon request by the State Fire Marshal.

a. Electric single station and electric multiple station smoke alarms shall be tested monthly. A log of the test shall be kept on site for review by the fire code official.

b. Battery powered smoke alarms shall be tested weekly. A log of the test results shall be kept on site for review by the fire code official.

c. Portable fire extinguishers shall be visually inspected monthly to ensure proper charge, accessibility, and that the extinguisher hose is free of obstruction.

(d) Frequency. Periodic testing and inspection of each fire suppression and each alarm system shall be performed as ***established in subparagraphs 1. through 3. of this paragraph.[~~follows:~~]***

1. Fire detection and alarm systems and all fire suppression systems in buildings other than state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested for proper operation annually.

2. Fire detection and alarm systems and all fire suppression systems in state licensed hospitals, nursing homes, and ambulatory surgical centers shall be inspected and tested quarterly by a Kentucky certified inspector for sprinkler systems and fire alarms, respectively***.[~~; and~~]***

3. Systems or components for which the manufacturer recommends more frequent checks shall be performed as described by the manufacturer's instructions.

(e) Inspectors.

1. Fire alarm inspectors shall apply to be certified by the department on a Form FPS 33-01, Application for Fire Alarm Systems Certification, and shall:

a.(i) Be qualified as NICET level two (2), level three (3), or level four (4) in fire alarm systems; or

(ii) Pass the examination for alarm inspector administered by an examination provider approved by the department;

b. Have had at least eighteen (18) months of experience in installation, repair, testing, or a combination thereof during the five (5) year period immediately preceding application;

c. Pay an annual certification fee of fifty (50) dollars for each

classification applied for; and

d. Submit a passport-sized color photograph with the application.

2. For renewals of fire alarm inspector certification, an applicant shall:

a. Submit a completed Form FPS 33-02, Renewal Application for Fire Alarm Systems Certification, May 2020;

b. Pay an annual certification renewal fee of fifty (50) dollars for each classification held;

c. Submit a passport-sized color photograph with the renewal application; and

d. (i) Provide proof of six (6) hours of continuing education from an approved provider obtained in the twelve (12) months prior to renewal; or

(ii) Provide proof of current NICET certification.

3. Penalties. An applicant shall be subject to penalties established in KRS 227.990 and may be denied certification ***or[nor]***[~~or~~] renewal for:

a. Failure of a certified fire alarm inspector to conduct an inspection in accordance with the NFPA 72 standard;

b. Submission of false inspection reports;

c. Performing inspections without first having been certified by the department as a fire alarm inspector; or

d. Making a false or misleading statement on an application for certification or renewal.

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

(a) NFPA 1, "Uniform Fire Code", 2018[~~2012~~] edition;

(b) NFPA 101, "Life Safety Code", 2018[~~2012~~] edition;

(c) NFPA 70, "National Electrical Code®", 2018[~~2011~~] edition;

(d) FPS 33-01, "Application for Fire Alarm Systems Certification", May 2020; and

(e) FPS 33-02, "Renewal Application for Fire Alarm Systems Certification", May 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. 815 KAR 10:060:

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Fire Prevention
(As Amended at ARRS, November 9, 2021)

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

RELATES TO: KRS 224.60-105, 224.60-135, 227.300

STATUTORY AUTHORITY: KRS ***189B.030, 189B.060,*** 224.60-135(5)[~~, 227.300~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-135(5) requires the State Fire Marshal to promulgate administrative regulations requiring a person or organization who installs, repairs, [~~interior lines, installs corrosion protection,~~] closes, or removes an underground [~~petroleum~~] storage tank for a[~~an~~] petroleum storage tank owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance***[,]*** and technical competency and proficiency. This administrative regulation establishes the minimum requirements for determining technical competency and proficiency of a company ***[who is]***responsible for the installation, repair, interior lining, installation of corrosion protection, ***or*** removal or closure of a system by a qualifying individual and for determining financial capability through proof of insurance.

Section 1. Definitions. (1) "Certified contractor" means an individual or organization certified by the State Fire Marshal as qualified to:

(a) Engage in the business of installing, repairing, interior lining, installing corrosion protection, ***or*** removing or closing a UPST system; or

(b) Supervise an employee engaged in an activity listed in paragraph (a) of this subsection.

(2) "Close" or "closure" means permanently taking an underground storage tank out of service without removing it from the ground.

(3) ***"Remove" or "removal" means permanently taking an underground storage tank or a component out of service by removing it from the ground.***

(4) "Repair"***:***

(a) Means the restoration of a UPST system or component***;*** and

(b) Does not mean[~~does not include~~] routine maintenance or corrosion protection applied to an existing installation***[,]*** or the application of interior lining.[~~that: (a) Has caused a release of a product from the system or the modification of the tank or a system component; and~~

~~(b) Does not include routine maintenance or corrosion protection applied to an existing installation, or the application of interior lining.~~]***[***

~~(4) "Remove" or "removal" means permanently taking an underground storage tank or a component out of service by removing it from the ground.~~]

(5) "Routine maintenance" means servicing the UPST system or a component without excavation [~~or making or the breaking of a connection below ground~~].

(6) "Underground storage tank" is defined by KRS 224.60-100(1).

(7) "Upgrade"***:***

(a) Means a modification or addition to a UPST system***; and***

(b) Does not mean[~~except~~] routine maintenance.

(8) "UPST system" means an underground storage tank that is used solely for the storage of petroleum or a petroleum product.

Section 2. (1) A permit for the installation of a UPST system shall not be issued by the State Fire Marshal unless the applicant for the permit:

(a) Is certified by the State Fire Marshal's office; and

(b) Assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of 815 KAR 10:060 and [~~the Natural Resources and Environmental Protection Cabinet promulgated in~~] 401 KAR Chapter 42.

(2) An individual or company shall not install, remove, repair, interior line, install corrosion protection, or close a UPST system unless the installation, removal, interior lining, ***or*** installation of corrosion protection repair or closure:

(a) Is made by a certified contractor; and

(b) Complies with all[~~the~~] applicable requirements[~~administrative regulations~~] of 815 KAR 10:060 and[~~the Natural Resources and Environmental Protection Cabinet, promulgated in~~] 401 KAR Chapter 42.

(3) A certificate authorizing a company to engage in an activity regulated by this administrative regulation shall be issued under the name of the company if the company:

(a) Applies for the certification; and

(b) Has in its employ at least one (1) certified contractor who:

1. Meets the supervision requirements established in Section 3 of this administrative regulation; and

2. Shall:

a. Direct an employee engaged in an activity regulated by this administrative regulation; and

b. Exercise independent judgment regarding the recommendation of an activity to an employee acting under his direction.

Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for***[~~each of the following activities~~]***:

(a) Preparation of the excavation immediately prior to receiving

backfill or a component of the UPST system;

(b) Setting of the UPST system, including placement of an anchoring device, backfilling to the level of the UPST system**,** and strapping;

(c) Installing piping and its components, field coating, or corrosion protecting piping and its components;

(d) Final inspection and pressure testing of a component of the tank or piping component of the UPST system; and

(e) Completion of the backfilling and filling of the excavation.

(2) A repair to a UPST system shall require a certified contractor to be present on site for ***the[~~each of the following activities~~]***:

(a) ***[~~The~~]***Actual excavation of an existing UPST system;

(b) ***[~~The~~]***Actual performance of a repair to the UPST system;

(c) ***[~~The~~]***Connection of a component of the piping during the repair project;

(d) ***[~~The~~]***Pressure testing of the UPST or its associated piping during the repair project;

(e) ***[~~The~~]***Replacement of a piping valve, fill pipe, vent, leak detection device, or spill and overfill protection device; and

(f) ***[~~The~~]***Addition of a leak detection device or spill and overfill device.

(3) Preparation for closing a UPST system shall require a certified contractor to be present on site for***[~~each of the following activities~~]***:

(a) The cleaning and purging of a UPST system;

(b) The filling of a UPST system with an inert solid material;

(c) All testing associated with the cleaning and purging processes; and

(d) The disconnection or capping of a component of the UPST system during the closing.

(4) Removal of a UPST system shall require a certified contractor to be present on site during***[~~each of the following activities~~]***:

(a) The cleaning and purging of the UPST system;

(b) The actual excavation and removal of the UPST system or a component;

(c) All testing associated with the cleaning and purging process[~~processes~~]; and

(d) The disconnection or capping of a component of the UPST system during the removal.

(5) The interior tank lining of a UPST system shall require a certified contractor to be present on site during***[~~each of the following activities~~]***:

(a) The cleaning and purging of the UPST system;

(b) The excavation of the tank top;

(c) The cutting of the top of the tank;

(d) The entry of the tank;

(e) The preparation of the interior of the tank;

(f) The application of the lining of the tank; and

(g) The closing and testing of the tank.

(6) The installation of corrosion protection to a UPST system shall require a certified contractor to be present on site during***[~~each of the following activities~~]***:

(a) Excavation; and

(b) The installation of an approved corrosion protection system.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where ***the work is being supervised[~~he is supervising work~~]***. Upon request of a fire official or agent of the Energy and Environment[~~Natural Resources and Environmental Protection~~] Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall:

(1) Submit an application accompanied by a nonrefundable fee of $300, to the State Fire Marshal, on application form ***[“]***SFM/UPST #01, May, 2020[~~2001~~]***[~~” which is incorporated by reference in Section 11 of this administrative regulation~~]***;

(2) Be an individual at least eighteen (18) years of age;

(3) Verify to the State Fire Marshal the individual’s experience in the installation of, performance of repairs on site to, interior lining of, installation of corrosion protection, ***and*** closure and removal of UPST systems, as required by Section 6 of this administrative regulation;

(4) Complete the examination requirements of Section 7 of this administrative regulation;

(5) Provide proof of financial capability for taking corrective action and for compensating a third party for bodily injury or property damage by submitting certificates of general liability insurance in the minimum amount of $500,000 and pollution liability insurance or other proof of financial capability to respond to damages in the minimum amount of $25,000 per occurrence; and

(6) If the individual wishes the certificate to be issued with a company name, indicate the company name on the application form. The company shall provide the insurance certificates required by subsection (5) of this section and ***comply with[~~be subject to~~]*** this administrative regulation.

Section 6. Experience Requirements. (1) The person making application shall demonstrate that within five (5) years immediately prior to making application, ***the applicant[~~that he~~]*** has participated in the installation of, performance of repairs on site to, closure of, interior lining of, installation of corrosion protection to, or removal of a minimum of six (6) underground storage tanks, except that:

(a) Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall reduce the experience requirements of this subsection by one-third (1/3); or

(b) A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).

(2)(a) An applicant requesting installer or remover certification shall:

1. Have installed at least three (3) UPST systems; ***and***

2. Meet the experience requirements established in subsections (3), (4), and (5) of this section.

(b) A certified installer or remover shall be qualified to perform work on a UPST system.

(3) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks.

(4) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of tank lining shall demonstrate experience in lining of ***at least*** six (6) underground storage tanks or provide proof of certification from the tank interior lining manufacturer or supplier of lining material.

(5) An applicant requesting certification pursuant to this administrative regulation for the limited function of installing corrosion protection shall demonstrate experience in the installation of ***at least*** six (6) corrosion protection systems.

Section 7. Probationary Certification. If the applicant does not comply with the level of experience required by Section 6 of this administrative regulation, the applicant shall receive a probationary certificate under the following conditions:

(1) An applicant shall obtain a minimum score of eighty-five (85) percent on the written examination;

(2) An applicant shall complete ***at least*** three (3) applicable UPST activities for which the applicant seeks certification within one (1) year of the issuance of the certificate;

(3) All UPST activities shall comply with applicable codes and statutes;

(4) An applicant shall not install, interior line, install corrosion protection, remove, close, backfill around**,** or cover a tank installation during the probationary period without prior approval of the State Fire Marshal’s office; and

(5) An applicant shall pay a $100 add-on inspection fee for each site where a tank is removed, closed, installed, upgraded**,** or repaired by the applicant.

Section 8. Examination Requirements. Each applicant for

certified contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.

(1) The applicant shall submit payment of a fifty (50) dollar nonrefundable fee at least ten (10) days prior to the date of the examination.

(2) The examination for certification as an installer or remover shall be a written multiple choice examination covering all aspects of the installation, repair, interior lining, installation of corrosion protection, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, ***KRS Subchapter 224.60, 806 KAR Chapter 30, and 806 KAR 10:060,[~~laws and administrative regulations~~]*** and of current technological and industry recommended practices with respect to the proper installation, repair, interior lining, installation of corrosion protection, closure, and removal of UPST systems.

(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing a UPST system shall be tested on knowledge of closure and removal.

(4) An applicant who requests to be a certified contractor for the limited function of interior lining of UPST systems shall be tested on knowledge of cleaning***[~~,~~]*** and lining the interior of an underground petroleum storage tank.

(5) An applicant who requests to be a certified contractor for the limited purpose of installing corrosion protection shall be tested on the installation, monitoring, and general knowledge of a cathodic protection system.

(6) An applicant may request permission to take the examination orally, upon good cause shown.

(7) An applicant shall obtain a minimum score of seventy-five (75) percent on the written examination to satisfactorily pass.

(8) An applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(9) An examination shall be given at least monthly in the State Fire Marshal's Office located at 500 Mero Street, Frankfort, Kentucky 40601.

(10) An examination shall be graded and the applicant notified on the day of the examination. An examination paper:

(a) Shall not be returned to the applicant; and

(b) May be reviewed by the applicant on the day of the examination.

(11) With the application, the State Fire Marshal shall ***provide[~~furnish~~]*** the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to ***KRS Subchapter 224.60, 806 KAR Chapter 30, 806 KAR 10:060,[~~appropriate laws, administrative regulations~~]*** and industry publications.

Section 9. Certification and Renewal Procedures. (1) The State Fire Marshal shall issue a certificate to each individual as required by Sections 5 through 7 of this administrative regulation. Each certificate shall be renewed annually for a fee of $100 on Form SFM/UPST #02, May, 2020[~~2001~~].

(2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if the applicant:

(a) Fails to provide the:

1. Information required by the application form SFM/UPST #01;
2. Insurance or financial responsibility certificates; or
3. The[~~the~~] fee required for application and examination;

(b) Fails to comply with the experience and education requirements of this administrative regulation;

(c) Fails to successfully pass the examination required by this administrative regulation; or

(d) Makes a misrepresentation or submits a false statement with the application.

(3) A certified contractor who fails to renew ***[~~his~~]***certification ***within[~~with~~]***[~~within~~] a one (1) year period from the most recent expiration date of ***the[~~his~~]*** certification shall:

(a) Be treated as a new applicant;

(b) Retake the examination; and

(c) Comply with the new applicant requirements.

Section 10. Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation shall be suspended or revoked by the State Fire Marshal if:

(1) The certified contractor negligently, incompetently, recklessly, or intentionally violated a provision of this administrative regulation or a required code relating to installation, repair, lining, closure, or removal;

(2) The certified contractor recklessly or intentionally caused or ***allowed[~~permitted~~]*** a person under the contractor's supervision to install, perform a repair on site to, interior line, install corrosion protection, close, or remove a UPST system in violation of 815 KAR 10:060;

(3) The certified contractor obtained the certification through fraud or misrepresentation;

(4) The individual who took the examination, provided the experience requirements, and requested the certificate be issued with a company's name and proof of insurance is no longer employed by the company in whose name the certificate was issued; or

(5) The certified contractor failed to renew the certification in accordance with Section 9 of this administrative regulation.

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

(a) Form SFM/UPST #01, "Application for Certification as an Underground Tank Contractor", May 2020; and

(b) [~~Form~~] SFM/UPST #02, "Installer/Remover Certification Renewal Form", May[~~,~~] 2020.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law at the State Fire Marshal's Office, Division of Hazardous Materials, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Division of Disability Determinations
(As Amended at ARRS, November 9, 2021)

923 KAR 2:470. Disability Determinations Program.

RELATES TO: [~~KRS 194.030(6),~~] KRS 205.245, 20 C. F. R. 401.5-401.200 [~~20 C.F.R. 401.100-401.600~~], Subparts A, B, C, [~~E, F,~~] 404.900-404.999d, Subpart J, [~~404.1501-404.1599, Appendix 1 & 2, Subpart P, 404.1601 -404.1694, Subpart Q, 416.901 - 416.998, Subpart I, 416.1001-416.1094, Subpart J,~~] 416.1400 - 416.1499, Subpart N, 416.1701 - 416.1725, Subpart Q, 422.401 - 422.445[~~422.449~~], Subpart E

STATUTORY AUTHORITY: KRS 194A.030(9), 194A.050***(1)***, [~~KRS 194.050, EO 96-862, 20 C. F. R. 401.100-600, 20 C.F.R. 401.100-600, Subparts A, B, C, E, F, 404.900 -404.999d, Subpart J,~~] 20 C.F. R. 404.1501 - 404.1599, Appendix 1 & 2, Subpart P, 404.1601 - 404.1694, Subpart Q, 416.901 – ***416.999d[~~416.999~~]*** [~~416.998~~], Subpart I, 416.1001 - 416.1094, Subpart J[~~, 416.1400 - 416.1499, Subpart N, 416.1701 - 416.1725, Subpart Q, 422.401 - 422.449, Subpart E~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030***(9)*** requires the Cabinet for Health and Family Services, Department for Income Support to serve as the state unit, as required by Title II and Title XVI of the Social Security Act, and shall have responsibility for determining eligibility for disability for those citizens of the Commonwealth who file applications for disability with the Social Security Administration. KRS 194A.050***(1)***

requires that the Secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law. 20 C.F.R. ***404.1501[~~404-1501~~]***-404.1599 provides that in order for a person to be entitled to any benefits based upon disability or blindness or to have a period of disability established, they must be disabled or blind as defined in Title II of the Social Security Act. 20 C.F.R. 404.1601-404.1694 provides the standards of performance and administrative requirements and procedures for states making determinations of disability under Title II of the Social Security Act. 20 C.F.R. 416.1001-416.1094 provides the standards of performance and administrative requirements and procedures for states making determinations of disability under title XVI of the Social Security Act. ***This administrative regulation establishes procedures and requirements for making disability determinations.*** [~~Executive Order 96-862 transfers to the Cabinet for Families and Children the authority to administer a program under 20 C.F.R. 404.1503 for determinations of disability. The Cabinet for Families and Children, Department for Disability Determination Services shall make disability determinations for Social Security Disability and Supplemental Security Income.~~]

Section 1. The following C.F.R. sections[~~, effective 4-1-96,~~] govern disability determinations made by the Cabinet for Health and Family Services [~~Families and Children~~], Department for Income Support, Division of Disability Determination Services:

(1) 20 C.F.R. 401.5 -401.200 [~~20 C.F.R. 401.100-401.600~~], Subparts A, B, and C; [~~, E, F;~~]

(2) 20 C.F.R. 404.900 - 404.999d, Subpart J;

(3) 20 C.F.R. 404.1501 - 404.1599, Appendix 1 & 2, Subpart P;

(4) 20 C.F.R. 404.1601 - 404.1694, Subpart Q;

(5) 20 C.F.R. 416.901 - 416.999d[~~416.998~~], Subpart I;

(6) 20 C.F.R. 416.1001 - 416.1094, Subpart J;

(7) 20 C.F.R. 416.1400 - 416.1499, Subpart N;

(8) 20 C.F.R. 416.1701 - 416.1725, Subpart Q; ***and***

(9) 20 C.F.R. 422.401 - 422.445 [~~422.449~~], Subpart E.

CONTACT PERSON: Krista Quarles, Policy Specialist, 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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
Board of Nursing
(Amended After Comments)

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.011(5), 314.021, 314.041(1)(a), 314.111(1), 314.131(1), (2), 194A.540(11), 620.020(8)

STATUTORY AUTHORITY: KRS 314.041(1)(a), 314.051(1)(a), 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) and 314.051(1)(a) require that an applicant for licensure as a registered or licensed practical nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing regardless of delivery models shall meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the board to promulgate administrative regulations necessary to approve programs of nursing. This administrative regulation establishes the curriculum requirements for prelicensure registered nurse and practical nursing programs.

Section 1. Definitions. (1) "Debriefing" means an activity that follows a simulation experience, is led by a nurse faculty as established in 201 KAR 20:310, Section 2, encourages participant's reflective thinking, and provides feedback regarding the participant's performance.

(2) "Distance learning" means didactic instruction offered by any means where the student and faculty are in separate physical locations.

(3) "External examination" means **[~~an examination, quiz, or quiz questions, not produced by the program of nursing or its faculty~~] a standardized or norm-referenced examination that is designed to compare and rank test takers in relation to one another and is not produced by the program of nursing.**

(4) "Practical nursing program" means a program of nursing organized and administered by a vocational, technical, or adult education system or an independent school at a postsecondary level that awards the graduate a diploma in practical nursing upon meeting requirements of the program.

(5)[~~(4)~~] "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse.

(6)[~~(5)~~] "Registered nursing program" means a program of nursing organized and administered by an institution of higher learning that awards a degree in nursing upon meeting requirements of the program.

(7)[~~(6)~~] "Remediation" means the process by which a student improves or corrects a knowledge deficit through external examinations, other assignments or activities**[~~, and which may result in an upward adjustment to a student's final course grade in accordance with Section 4 of this regulation~~]**.

(8)[~~(7)~~] "Simulation" means an activity or a technique that replicates actual or potential situations in clinical practice that allows the participant to develop or enhance critical thinking.

Section 2. General. (1) An applicant for licensure shall complete a prelicensure program of nursing that meets the requirements of this administrative regulation.

(2) Length.

(a) A registered nursing program shall be a minimum of two (2) academic years, which may include prior articulated academic credits.

(b) A practical nursing program shall be a minimum of one (1) academic year.

(3) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(b) The program outcomes shall describe the expected competencies of the graduate.

(c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(4) Approval.

(a) A curriculum plan shall be approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall enable the student to develop the nursing knowledge, skills, and competencies for the expected entry level and scope of practice.

(c) Theory and clinical experiences shall provide the student with opportunities to acquire and demonstrate the knowledge, skills, and competencies necessary for safe practice.

(5) Curriculum plan.

(a) The development, implementation, evaluation, and revision of the curriculum shall be the responsibility of the nursing faculty including the program administrator with input from students.

(b) The curriculum of the program of nursing shall assure the development of evidence based practice for the level and scope of nursing practice. This shall include the skills to identify and apply best practices in nursing care by providing client-centered, culturally competent care and respecting client differences, values, preferences, and expressed needs.

(c) A registered nursing program may determine that a portion of the curriculum fulfills the scope of practice for licensed practical nursing and allow students to exit the program and be made eligible for the NCLEX-PN examination. The registered nursing program shall submit its plan to the board for approval.

(6) Organization of the curriculum.

(a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.

(b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program.

(c) There shall be a rationale for the amount of time or credits allocated to course and clinical practice experience.

(d) A course syllabus shall be developed for each nursing course to include outcomes, planned instruction, learning activities, and method of evaluation.

1. Each course shall be implemented in accordance with the established course syllabus.

2. A copy of each course syllabus shall be on file in the program of nursing office and shall be available to the board upon request.

(e) The curriculum plan shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(f) A course may be offered as a distance learning course. A distance learning course shall meet the same standards as established in 201 KAR 20:260 through 201 KAR 20:360 for any other course.

(7) Curriculum components.

(a) The curriculum of a registered nursing program or a practical nursing program shall prepare the graduate for licensure and full scope of practice as defined by current standards for nursing practice and expected competencies of graduates at the appropriate educational level.

(b) The curriculum shall include:

1. Theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life span; and

2. Information regarding Kentucky nursing laws, including scope of practice, licensure requirements, and the role of the board of nursing. This subparagraph shall be implemented by January 1, 2020.

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program outcomes and enable the student to observe and practice safe nursing care of persons at each stage of the life span. Experiences shall include opportunities

to learn and provide care to diverse ethnic and cultural populations.

(d) Clinical practice experience shall be supervised by board approved nursing faculty in accordance with 201 KAR 20:310.

(e) The curriculum shall have written measurable program outcomes that reflect the role of the graduate.

(f) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(8) Curriculum change.

(a) A program of nursing that is not accredited by a national nursing accrediting body shall submit a written plan for major curriculum revisions to the board a minimum of four (4) months prior to the planned implementation.

1. A request for curriculum revision shall include the present plan and the proposed change with rationale and expected outcomes.

2. The board shall be available to assist if curriculum revisions are being considered.

3. Major curriculum revisions shall include:

a. A change in the philosophy, mission, or outcomes that results in a reorganization or reconceptualization of the entire curriculum; or

b. The addition of tracks or alternative programs of study that provide educational mobility.

(b) A program of nursing that implements a curriculum change shall provide an evaluation of the outcomes of those changes through the first graduating class following full implementation of the curriculum change. The program of nursing shall also submit the evaluation with its annual report.

(9) Integrated practicum.

(a) The curriculum shall include an integrated practicum. The integrated practicum shall consist of a minimum of 120 clock hours of concentrated clinical experience of direct patient care in a health care facility or health care organization.

(b) The integrated practicum shall be completed within a period not to exceed seven (7) consecutive weeks while the governing institution is in session and within seven (7) months of graduation.

Section 3. Simulation Standards. (1)(a) A program of nursing that uses simulation shall adhere to the standards set in this section.

(b) A program of nursing shall not use simulation for more than fifty (50) percent of its total clinical hours required for graduation.

(2)(a) The program of nursing shall provide resources sufficient to support the simulation activities, including training of the faculty, and programmatic outcomes.

(b) Simulation activities shall be managed by a nurse who is academically and experientially qualified in the use of simulation, both in its pedagogical and technical aspects. The managing nurse shall demonstrate his or her qualifications by:

1. Attendance at simulation conferences;

2. Completion of educational activities related to simulation; or

3. Holding a credential issued by the Society for Simulation in Healthcare or a simulation preparation program recognized by the International Nursing Association for Clinical Simulation.

(c) The program of nursing shall have written rationale for the use and purpose of simulation within the curriculum.

(d) The program of nursing shall have an orientation plan for faculty concerning simulation.

(e) The program of nursing shall have a written procedure on the method of prebriefing and debriefing each simulated activity.

(3) The program of nursing shall have appropriate facilities for conducting simulation. This shall include educational and technological resources and equipment to meet the intended objectives of the simulation.

(4) Faculty, both didactic and clinical, that utilize simulation shall:

(a) Have training in the use of simulation; and

(b) Engage in on-going professional development in the use of simulation.

(5) The simulation activities shall be linked to the program of nursing's course objectives and the programmatic outcomes.

(6) Beginning July 1, 2019, a program of nursing shall submit evidence of compliance with these standards in the annual report required by 201 KAR 20:360, Section 3(1) of this administrative regulation.

Section 4. Use of External Examinations. (1) [~~An~~] External examinations may be used to assist in the remediation of a student or as a part of the final course grade. **[~~If used as a part of the final course grade, the combined weight of all external examinations, external quizzes and remediation shall not count for more than ten (10) percent of the final course grade~~]** [~~is a standardized or norm referenced examination that is designed to compare and rank test takers in relation to one another and is not produced by the program of nursing~~].

(2) **[~~With the exception of the impact upon progression or graduation that is allowed pursuant to subsection (1) of this section, a~~]** **A** program of nursing shall not use an external examination **as the sole basis** to determine a student's progression or graduation.

(3) A curriculum change that includes the implementation of an external examination shall include consideration of multiple evaluation criteria, and shall not be based solely on external examination test results. **[**

~~(4)~~][~~(3)~~]**[~~An external examination may be used to assist in the remediation of a student.~~]**[~~The examination shall not be the sole remediation strategy~~]**[~~.~~]**

~~(4)[(5)~~][~~(4)~~] A program of nursing that utilizes an external examinations as [~~the basis for~~] a component of [~~requiring~~] student remediation shall ensure that completion of remediation occurs within the same semester or quarter.

~~(5)[(6)~~][~~(5)~~] The academic progression policy of the program of nursing and course syllabi shall clearly outline the role of [~~the~~] an external examination, including the frequency of and schedule for such testing, and the weight to be applied to results when calculating the final course grade. A course syllabus that references an external examination shall include information needed to calculate the impact of test results in any given external examination on the final course grade [~~in remediation~~]. If a course syllabus require a specific average test score on all exams as a condition for passing the course, student results on external exams shall be excluded from that calculation. **[**

~~(7) With the exception of the impact upon progression or graduation that is allowed pursuant to subsection (1) of this section, and the option of requiring all students in a course to take external examinations, a~~] **A** program of nursing shall not require students who have completed all requirements for graduation to earn a specific score or benchmark on an external examination as a condition for graduation or for placing the student's name on the Certified List of Kentucky Program of Nursing Graduates pursuant to 201 KAR 20:070.

Section 5. Curriculum [~~Statutory~~] Additions. (1) Each program of nursing shall include information in its curriculum that meets the requirements of KRS 194A.540 related to domestic violence and elder abuse, neglect, and exploitation.

(2) Each program of nursing shall include information about:

(a) Pediatric abusive head trauma as it is defined in KRS 620.020;

(b) Suicide prevention and wellness topics listed in subsection (3) of this section by August 15, 2022; and

(c) Implicit bias topics listed in subsection (4) of this section by August 15, 2022.

(3) Suicide prevention and wellness topics shall include:

1. Chronic toxic stress and secondary traumatic stress potentially increasing the incidence of suicide amongst nurses;

2. A confidential and standardized pathway to care for nurses that addresses screening, assessing, safety planning, referrals and follow-up for nurses at risk for suicide;

3. Systems of care, evidence-informed approaches, and best practices to reduce suicide rates; and

4. Ethical legal considerations of caring for patients/nurses who are suicidal.

(4) Implicit bias topics shall include:

1. The impact of historical racism and other forms of invidious

discrimination on the provisions of healthcare;

2. Methods of evaluation the presence and extent of implicit bias; and

3. Measures that can be taken to reduce implicit bias.

JESSICA WILSON, President

APPROVED BY AGENCY: October 28, 2021

FILED WITH LRC: November 5, 2021 at 10:30 a.m.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey R. Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for curriculum in prelicensure programs of nursing education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111.

(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 for curriculum in prelicensure programs of nursing education.

(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 curriculum in prelicensure programs of nursing education.

(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: It clarifies how and when external examinations may be used by a program of nursing, and it identifies domestic violence, suicide prevention, and implicit bias as required curriculum for all Kentucky based programs of prelicensure RN and LPN education.

(b) The necessity of the amendment to the administrative regulation: The necessity of suicide prevention education in nursing curriculum is supported by recent landmark studies that establish that nurse suicide rates are higher than the general population in the United States (males = 33/100,000 vs 27/100,000; females = 10/100,000 vs 7/100,000). Davidson, J.E., et al., A Longitudinal Analysis of Nurse Suicide in the United States (2005–2016), Worldviews on Evidence-Based Nursing, 17: 6-15. doi:10.1111/wvn.12419 (2020). Domestic violence training is already mandated at KRS 194A.540(9). The need for nursing curriculum on the subject of implicit bias is demonstrated in a May 2021 report from the National Academies of Sciences, Engineering, and Medicine 2021. The Future of Nursing 2020-2030: Charting a Path to Achieve Health Equity. Washington, DC: The National Academies Press. https://doi.org/10.17226/25982. The absolute proscription on the use of external examinations in determinations regarding progression or graduation, which is in the version of the regulation that became effective on February 4, 2021, deprives nursing educators of a valuable educational tool. Based on stakeholder input and a reexamination of the usefulness of external examinations in preparing future nurses for practice readiness, the Board has determined that external examinations should be permitted in nursing education, subject to the limitation that they not for more than a 10% component of a course grade. It is noted that some programs of nursing education have two requirements for progression or graduation: (1) a passing overall course grade; and (2) a separate requirement that the student attain or exceed a specific score on averaged total on all exams in a course. The Board has determined that a student results on external exams should not be a factor with regard to a requirement that the student attain or exceed a specific average score on all exams in a course.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by expanding curriculum requirements to include subjects that are a needed component of nursing education. The clarification regarding external exams permits programs of nursing education to use external exams as a tool in nursing education, and guides programs of nursing in their use of such examinations.

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes: By setting curriculum standards for programs of prelicensure RN and LPN education. It is noted that the amendment eliminates the distinction between customized and non-customized external exams, as the proposed definition is premised solely on the involvement of persons or entities other than the educational institution and its faculty in the development of a testing instrument. The Board has also defined external exams to include quizzes and quiz questions that are developed by persons or entities other than the educational institution and its faculty. A school that utilizes external exams as a factor in determining progression or graduation must fully and accurately describe the grade calculation formula in its course syllabi and academic progression policies. Programs of prelicensure RN and LPN education that comply with these publication rules may require, in a syllabus and academic progression policy, that a student participate in an external exam; however, the schools are prohibited from requiring that all students achieve a specific score on an external examination. Even in the absence of an absolute “cut score” that all students must meet, the utilization of cumulative external exam results for up to 10% of a course grade will undoubtedly prevent progression or graduation for some students. The amendment expands the definition of remediation by indicating that remediation may result in an upward adjustment of student’s course grade, subject to the 10% cap for cumulative external exam results; however, all remediation efforts must be completed in the same semester or quarter as the specific course at issue.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Ninety-five (95) prelicensure programs of nursing, RN and LPN nursing students.

(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 comply with the permitted uses of external examinations. They will have to incorporate domestic violence, implicit bias, and suicide prevention into their educational curriculum for all prelicensure RN and LPN programs.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The costs associated with the development of curriculum on the subjects of domestic violence, implicit bias, and suicide provision will be minimized as a result of the involvement of the Robert Wood Johnson Foundation, the, National Academies of Sciences, Engineering and Medicine, the Kentucky Nurses Action Coalition, the Kentucky Nursing Deans and Directors, the Kentucky Nurses Association, and the Kentucky Cabinet for Health and Family Services. The regulation does not mandate the use of external exams; however, the decision of a school to utilize external exams may result in such costs being imposed upon student. The cost of one such exam, the ATI Comprehensive Predictor, ranges from $229-329, depending upon the contractual arrangements between the school and ATI, as well as volume pricing that is available when numerous students take the exam.

(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 standards. Students will be better prepared for nursing practice through their participation in external exams.

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

(a) Initially: There are no additional initial costs.

(b) On a continuing basis: There are no additional costs on a continuing basis.

(6) Provide 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 or amendment: No increase is needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases 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, 314.111(3), 194A.540, 620.020.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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: No increase or decrease in revenues or expenditures are anticipated as a consequence of the amendment.

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(Amended After Comments)

603 KAR 10:040. Advertising devices.

RELATES TO: KRS 177.572 - 177.576, 177.830 - 177.890, 177.990(2), 23 C.F.R. Part 750, 23 U.S.C. 131

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for static and electronic advertising devices.

Section 1. Definitions.

(1) "Abandoned" means that, for a period of one (1) year or more, an advertising device previously lawfully erected has:

(a) Not displayed advertising;

(b) Displayed obsolete advertising; or

(c) Needed substantial repairs due to lack of maintenance.

(2) "Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage, and process areas that are integral and essential to the primary business activity that takes place on the property.

(3) “Advertiser” means a person or entity entered into a contractual agreement with the owner of an advertising device for advertisement services in the advertiser’s interest that is displayed upon the subject advertising device at the time of violation.

(4) "Advertising device" is defined by KRS 177.830(5).**[**

~~**(5) “Business device” means a device for advertising for which no compensation is derived, received, or exchanged for its use.**~~**]**

(5)[~~(6)~~] "Centerline of the highway" means a line:

(a) Equidistant from the edges of the median separating the main traveled ways of a divided:

1. Interstate;
2. Parkway;
3. National highway system; or
4. Federal-aid primary highway; or

(b) That is the centerline of the main traveled way of a non-divided:

1. Interstate;
2. Parkway;
3. National highway system; or
4. Federal-aid primary highway.

(6)[~~(7)~~] "Commercial or industrial activities" is defined by KRS 177.830(9).

(7)[~~(8)~~] "Commercial or industrial land use":

(a) Means an activity, in a zoned area within 660 feet of the interstate or parkway right-of-way, engaged in for financial gain; and

(b) Does not mean:

1. The leasing of property for residential purposes;
2. An activity conducted in a building principally used as a residence;
3. An agricultural, forestry, ranching, grazing, farming, or related enterprise, including a wayside fresh produce stand;
4. Operation, maintenance, or storage of an advertising device;
5. A railroad track or minor siding; or
6. A facility generally recognized as a utility such as a cell tower.

(8)[~~(9)~~] "Commercial or industrial zone" means an area adjacent to a highway zoned to allow business, commerce, or trade as established in local ordinance or regulation.

(9)[~~(10)~~] "Compensation" is defined by KRS 177.830(11).

(10)[~~(11)~~] “Conversion” or “converted” means to legally modify or change a legal permitted static advertising device to a legal permitted electronic advertising device or a legal permitted electronic advertising device to a legal permitted static advertising device and can include the replacement of the device face, facing, or structure.

(11)[~~(12)~~] "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(12)[~~(13)~~] "Destroyed" means **an** **[~~a nonconforming~~]** advertising device damaged beyond substantial repair due to weather related events, vandalism, or other criminal or tortious acts.

(13)[~~(14)~~] "Electronic advertising device":

(a) Means an advertising device that changes its message or copy by programmable electronic or mechanical processes; and

(b) Does not mean a numerical display changed by an electronic or mechanical process not exceeding one-half of the face.

(14)[~~(15)~~] "Enlargement" means an addition to the permitted area of the facing of an advertising device.

(15)[~~(16)~~] "Erect":

(a) Means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or bring into being or establish; and

(b) Does not mean routine maintenance, including changing of a message or copy.

(16)[~~(17)~~] “Exchange credit” means a singular allotment of value assigned by the department for the removal of an approved

eligible advertising device that can be transferred or redeemed by its owner in exchange for future qualification of an electronic advertising device permit.

(17)[~~(18)~~] "Extension" means a temporary addition to an advertising device for a message or copy.

(18)[~~(19)~~] "Face" means the part of the advertising device including trim and background that contains the message, copy, and informative content.

(19)[~~(20)~~] "Facing" means the face or faces displayed on the same advertising device and oriented in the same direction of travel.

(20)[~~(21)~~] "Federal-aid primary highway" is defined by KRS 177.830(3) and, pursuant to 23 U.S.C.131, refers to the existence of the highway on June 1, 1991.

(21)[~~(22)~~] "FHWA adjusted urban area boundaries" means a boundary, in addition to the urban area boundary, established by the department designed to encompass areas outside municipal boundaries that have urban characteristics with residential, commercial, industrial, or national defense land uses.

(22)[~~(23)~~] "Highway" means:

(a) An interstate, parkway, national highway system, or federal-aid primary highway located within the boundaries of the state of Kentucky and being further depicted by the Transportation Cabinet on http://maps.kytc.ky.gov/PAFOA/; and

(b) A public road maintained by the department.

(23)[~~(24)~~] "Interstate highway" is defined by KRS 177.830(2).

(24)[~~(25)~~] "Lawfully erected" means erected in compliance with law and administrative regulations in effect at the time of erection or as later allowed by law.

(25)[~~(26)~~] "Legal permit" means written authorization granting the erection or continued existence of an advertising device in compliance with current state law and administrative regulation.

(26)[~~(27)~~] "Main traveled way":

(a) Means the traveled way of a highway on which through traffic is carried; and

(b) Does not mean frontage roads, turning roadways, or parking areas.

(27)[~~(28)~~] "Nit" means a unit of measurement of luminance used to specify the brightness or the intensity of visible light from a device.

(28)[~~(29) "Noncompliant advertising device" means an advertising device that was erected within a protected area between the dates of April 24, 2020 and March 18, 2021 and that does not comply with current state law or this administrative regulation.~~

~~(30) "Noncompliant permit" means written authorization allowing the continued existence of a noncompliant advertising device, subject to current state law and this administrative regulation.~~

~~(31)~~] "Nonconforming advertising device" means an advertising device that was once lawfully erected but does not comply with:

(a) Current state law or this administrative regulation; or

(b) Changed conditions such as:

1. A change in zoning;

2. The relocation or reclassification of a highway;

3. A change in restriction on size, space, or distance; or

4. The abandonment of required business or businesses.

(29)[~~(32)~~] "Nonconforming permit" means written authorization allowing the continued existence of a nonconforming advertising device, subject to current state law and this administrative regulation.

(30)[~~(33)~~] "Official sign" means a sign located within the highway right-of-way that has been installed by or on behalf of the department or another public agency having jurisdiction.

(31)[~~(34)~~] "Permit" means written authorization allowing the erection or continued existence of an advertising device, subject to current state law and this administrative regulation.

(32)[~~(35)~~] "Protected area" means the area adjacent to the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway, and being:

(a) Within 660 feet from the edge of the right-of-way in an area defined as an urban area; and

(b) **Within and extending** **[~~Extending~~]** beyond 660 feet from the edge of the right-of-way outside of an area defined as an urban area.

(33)[~~(36)~~] "Scenic byway" is defined by KRS 177.572.

(34)[~~(37)~~] "Scenic highway" is defined by KRS 177.572.

(35)[~~(38)~~] "Static advertising device" means an advertising device that does not use electric or mechanical technology to change the message or copy but can include a numerical display changed by an electronic or mechanical process that does not exceed one-half of the face.

(36)[~~(39)~~] "Substantial repair" means the cost to repair the advertising device would exceed sixty (60) percent of the costs to replace it with an adverting device of the same basic construction using new materials and at the same location.

(37)[~~(40)~~] "Substantial structure" means an affixed, solid, or strong permanent construction.

(38)[~~(41)~~] "Turning roadway" means a connecting roadway for traffic turning between two (2) intersecting lanes of an interchange.

(39)[~~(42)~~] "Unzoned commercial or industrial area" is defined by KRS 177.830(8).

(40)[~~(43)~~] "Urban area" is defined by KRS 177.830(10) as well as any adjacent geographical area identified as FHWA Adjusted Urban Area Boundaries.

(41)[~~(44)~~] "Visible" means capable of being seen without visual aid by a person of normal visual acuity.

Section 2. Conditions Relating to Static and Electronic Advertising Devices Located in a Protected Area.

(1) A static or an electronic advertising device located in a protected area of an interstate, parkway, national highway system, or federal-aid primary highway displaying copy or a message, whether or not legible, that is visible from the main traveled way shall require a permit issued by the department.

(2) A permit shall only be issued for a device in a protected area of:

(a) An interstate or parkway being erected or maintained fifty (50) feet or more from the edge of the main traveled way or turning roadway that:

1. Is zoned commercial or industrial and was an incorporated municipality on or before September 21, 1959; or

2. Was zoned commercial or industrial and included a commercial or industrial land use on or before September 21, 1959; or

(b) A national highway system or federal-aid primary highway being erected or maintained in:

1. A commercial or industrial zone; or

2. An unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured **perpendicular to and along the centerline** **[~~along or parallel to the pavement~~]** of the highway; and

(c) Complies with applicable county or city zoning ordinance and regulations.

(3) To establish a protected area, the distance from the edge of a state-owned right-of-way shall be measured **perpendicular to and along** **[~~horizontally and at a right angle to~~]** the centerline of the interstate, parkway, national highway system, or federal-aid primary highway.

(4) The erection or existence of an advertising device shall be prohibited in a protected area if the device:

(a) Is abandoned;

(b) Is not clean and in good repair;

(c) Is not securely affixed to a substantial structure permanently attached to the ground;

(d) Directs the movement of traffic;

(e) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;

(f) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;

(g) Is erected or maintained upon a tree;

(h) Is erected upon or overhanging the right-of-way;

(i) Is mobile, temporary, or vehicular;

(j) Is a static advertising device and painted or drawn on rocks

or another natural feature; or

(k) Is a static advertising device and includes or is illuminated by flashing, intermittent, or moving lights.

(5) The spacing**, measured perpendicular to and along the centerline of the highway,** between static and electronic advertising devices **with visible facings oriented in the same [~~per~~]** direction of travel on:

(a) Interstates, parkways, national highway systems, or limited access federal-aid primary highways shall be a minimum of:

1. 2,500 feet between electronic advertising devices;

2. 500 feet between an electronic advertising device and a static advertising device; or

3. 500 feet between a static advertising device and another static advertising device; and

(b) Non-limited access federal-aid primary highways shall, pursuant to KRS 177.863(2)(a), be a minimum of:

1. 300 feet between advertising devices, unless separated by a building, natural obstruction, or roadway, in a manner so that only one (1) sign located within the required spacing distance shall be visible from the highway at any one time; or

2. 100 feet between advertising devices if located within an incorporated municipality.

(6) An advertising device displaying copy or message, whether or not legible, that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements of this section for each highway independently.

(7) An electronic advertising device shall only be erected or maintained within an urban area located within 660 feet of right-of-way of a highway.

(8) A static advertising device shall not be converted to an electronic advertising device prior to receiving a permit pursuant to Section **6[8]** of this administrative regulation.

(9) An electronic advertising device shall not be converted to a static advertising device prior to receiving a permit pursuant to Section **6[8]** of this administrative regulation.

(10) Lighting used for a static advertising device shall be:

(a) Only white;

(b) Effectively shielded to prevent a beam of light from being directed at the interstate, parkway, national highway system, or federal-aid primary highway;

(c) Of low intensity that shall not cause glare or impair the vision of a driver or interfere with the operation of a motor vehicle; and

(d) Of a luminance less than 300 nits.

(11) An electronic advertising device erected or maintained in a protected area shall:

(a) Not have a facing larger than 672 square feet;

(b) Not have more than one (1) face per facing;

(c) Not contain extensions to the face;

(d) Not have interior angles between two (2) facings that exceed forty-five (45) degrees; and

(e) Be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less. Software calibration reports or relevant data to determine compliance with this requirement shall be provided to the department upon request.

(12) The message or copy on an electronic advertising device shall:

(a) Be static for at least eight (8) seconds;

(b) Change from one (1) message or copy to another in less than two (2) seconds;

(c) Not blink, scroll, or contain animation or video; and

(d) Be programmed to freeze in a static display if a malfunction occurs.

(13) A static advertising device:

(a) Shall not:

1. Exceed the maximum size of 1,250 square feet per facing as established in KRS 177.863(3)(a);

2. Contain more than two (2) advertisements or faces per facing pursuant to KRS 177.863(3)(b); or

3. Have interior angles between two (2) facings that exceed forty-five (45) degrees **if device has more than two (2) faces**; and

(b) May contain extensions up to fifteen (15) percent of the face of the advertising device but shall not exceed the maximum size limits of the facing of the device established in KRS 177.863(3)(a).

(14) Static advertising devices that are no more than fifteen (15) feet apart at the nearest point between the devices and have the same ownership shall be counted as a single device.

(15) The name of the owner of an advertising device shall:

(a) Be legible from the main traveled way;

(b) Not be larger than twenty (20) square feet;

(c) Be shown without other owner information; and

(d) Not be considered an advertisement.

Section 3. Exchange of Advertising Device for Permit.

(1) An advertising device proposed for exchange shall require eligibility approval by the department pursuant to **[~~subsections (3), (4), and (5) of~~]** this section prior to removal.

(2) The owner of an approved advertising device exchange shall receive an exchange credit by the department upon verification of removal.

(3) An advertising device eligible for exchange shall be:

(a) Currently nonconforming as established in Section 4 of this administrative regulation or pursuant to local regulations;

(b) Not less than fifty (50) square feet per facing; and

(c) Situated in an unpermittable location in a protected area**.[~~; or~~**

[~~(d) Observable from a scenic highway.~~]

(4) The submittal of six (6) exchange credits shall be required for one (1) new electronic advertising device permit located within the protected area of an interstate, parkway, national highway system, or federal-aid primary highway.

(5) The submittal of five (5) exchange credits shall be required for the conversion of an existing legal permitted static advertising device in an urban area to an electronic advertising device.

(6) If an Application for Electronic Advertising Device is denied by the department, the department shall hold and apply any exchange credits pending the outcome of any subsequent appeal or until exchange credits can be applied toward another approved application.

(7) If the permittee voluntarily removes an advertising device and receives an exchange credit, the permittee shall thereby waive any right or claim to any additional compensation from the department for that device.

(8) The ownership of an exchange credit may be transferred with acknowledgment of the department and shall be submitted on a completed Advertising Device or Exchange Credit Ownership Transfer, TC Form 99-224.

Section 4. Nonconforming Static and Electronic Advertising Devices.

(1) A nonconforming advertising device in a protected area shall require a nonconforming permit.

(2) A nonconforming advertising device permit shall be required to be renewed annually pursuant to Section **6[~~8~~]** of this administrative regulation.

(3) A nonconforming advertising device may remain in place if the device:

(a) Is not abandoned;

(b) Has been subjected to only routine maintenance as established in subsection **(4)[~~(6)~~]** of this section;

(c) Was in compliance with state law and KAR Title 603 as well as local zoning, sign, or building restrictions at the time of erection; and

(d) Remains unaltered beyond the extent of routine maintenance as it was on the effective date of the state law or requirement of KAR Title 603 that made the device nonconforming.

(4) An owner may conduct routine maintenance of a nonconforming advertising device. Routine maintenance shall include:

(a) In kind replacement of material components with a like material component;

(b) Painting of supports and frames;

(c) Changing existing nonstructural light fixtures for energy efficiency;

(d) Replacement of nuts, bolts, or nails;

(e) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers;

(f) Rebuilding a destroyed advertising device; or

(g) Changing an advertising message or copy on an advertising device.

(5) An owner shall not conduct non-routine maintenance of a nonconforming advertising device. Non-routine maintenance shall include:

(a) Enlargement of the device;

(b) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(c) The addition of bracing, guy wires, or other reinforcement;

(d) A change in the location or configuration of the device;

(e) A change in the direction **or configuration** of the face or faces;

(f) The addition of a light or lights, either attached or unattached, to help illuminate the nonconforming static adverting device structure that previously had no lighting for illumination; or

(g) The addition of a variable or changeable message capability including a numerical display that is changed by an electronic or mechanical process on a static advertising device.

(6) Non-routine maintenance on a nonconforming advertising device shall constitute a violation of this administrative regulation and result in the loss of nonconforming classification and action pursuant to Section **8**[~~10~~] of this administrative regulation.

Section 5. [~~Business Devices.~~

~~(1) A business device that complies with this administrative regulation shall only be erected in a protected area if the device complies with county or city zoning ordinances but shall not require a permit from the department.~~

~~(2) A business device shall only be erected upon the property parcel where the business or businesses are located as is demarcated by the unique Parcel Identification Number utilized and assigned by the Property Valuation Administration Office of jurisdiction and:~~

~~(a) Inside the activity boundary line; or~~

~~(b) No further than 400 feet from the activity boundary line.~~

~~(3) A business device placed within fifty (50) feet of the activity boundary line shall not exceed 1,250 square feet, including border and trim excluding supports. An entrance or exit on the property shall be considered within the activity boundary line.~~

~~(4) If further than fifty (50) feet outside the activity boundary line, a business device shall not exceed:~~

~~(a) Twenty (20) feet in length, width, or height; and~~

~~(b) 150 square feet in area, including border and trim and excluding supports.~~

~~(5) No more than one (1) business device shall be located at a distance greater than fifty (50) feet outside of the activity boundary line.~~

~~(6) If taking measurements for the placement of a business device for an industrial park, the service road shall be considered within the activity boundary line of the industrial park.~~

~~(7) A business device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside the activity boundary line of the property parcel.~~

~~(8) If taking measurements for the placement of business device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.~~

~~(9) A business device erected for a shopping center, mall, or other combined business location shall either:~~

~~(a) Identify a business or businesses situated upon the same property parcel; or~~

~~(b) Display business activities being conducted upon the same property parcel.~~

~~(10) A business device shall not:~~

~~(a) Be of such intensity as to cause glare or impair the vision of a driver;~~

~~(b) Move, or have moving or animated parts;~~

~~(c) Be erected or maintained on a tree; or~~

~~(d) Be erected upon or overhanging the right-of-way.~~

~~(11) An electronic business device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less. Software calibration reports or relevant data to determine compliance with this requirement shall be provided to the department upon request.~~

~~(12) A business device shall not affect the spacing requirements of an advertising device as established in Section 2(5) of this administrative regulation.~~

~~(13) Extensions of a facing up to fifteen (15) percent shall be allowed but shall not exceed the maximum size of the facing of the device as established this section.~~

~~(14) The owner of a business device shall be subject to revolving compensation compliance reviews and upon request shall provide to the department all requested documentation relevant to certify the continued compliance of a business device such as:~~

~~(a) A signed affidavit in which the device owner shall attest to the device's compliance to current law and this administrative regulation;~~

~~(b) Financial records or statements relevant to compliance certification; and~~

~~(c) PVA parcel data.~~

~~(15) If the device is determined to be an advertising device, paragraphs (a) through (d) of this subsection shall apply.~~

~~(a) The department shall send notice by certified letter to the owner of a business device that becomes subject to this chapter. If the owner of the business device cannot be identified, the department shall send notice to the landowner of record.~~

~~(b) The device owner shall apply for and obtain an advertising device permit in accordance with the provisions of this administrative regulation within sixty (60) days of notice.~~

~~(c) If the device owner cannot be determined or located, the landowner shall be required to remove the device.~~

~~(d) If the owner of a device as established in paragraph (a) of this subsection does not obtain an advertising device permit within sixty (60) days of the notice, the owner shall be subject to:~~

~~1. A fine of $500 per violation pursuant to KRS 177.990(2); and~~

~~2. Provisions as established in KRS 177.870.~~

~~(16) If the device is found to be out of compliance with current business device requirements, paragraphs (a) through (d) of this subsection shall apply.~~

~~(a) The department shall send notice by certified letter to the owner of a business device stating the required corrective action or actions to become compliant with the provisions of this section. If the owner of the business device cannot be identified, the department shall send notice to the landowner of record.~~

~~(b) The device owner shall implement required corrective actions or actions within sixty (60) days of notice.~~

~~(c) If the device owner cannot be determined or located, the landowner shall be required to remove the device.~~

~~(d) If the owner of a device as established in paragraph (a) of this subsection does not correct the violation or violations within sixty (60) days of notice, the owner shall be subject to:~~

~~1. A fine of $500 per violation pursuant to KRS 177.990(2); and~~

~~2. Action pursuant to Section 10 of this administrative~~

~~regulation.~~

~~Section 6. Noncompliant Static and Electronic Advertising Devices.~~

~~(1) A noncompliant advertising device in a protected area shall require a noncompliant permit.~~

~~(2) A noncompliant advertising device permit shall be required to be renewed annually pursuant to Section 8 of this administrative regulation.~~

~~(3) A noncompliant advertising device may remain in place if the device:~~

~~(a) Is not abandoned;~~

~~(b) Has been limited to maintenance activities as established in Section 4(6) (b) through (f) of this administrative regulation to correct hazardous conditions determined to be in the interest of the safety of the traveling public; and~~

~~(c) Was in compliance with local zoning, sign, or building restrictions at time of erection.~~

~~(4) A noncompliant advertising device in a protected area shall be granted a legal permit if the device is in compliance with current state law and this administrative regulation.~~

~~(5) Except as established in subsection (3)(b) of this section, maintenance on a noncompliant advertising device shall constitute a violation of KRS 177 and this administrative regulation and shall result in the loss of noncompliant classification and action pursuant to Section 10 of this administrative regulation.~~

~~(6) Noncompliant advertising devices shall not be eligible as an exchange credit.~~

~~Section 7.~~] Scenic Highways and Byways.

(1) Subsequent to the designation of a scenic highway by the Transportation Cabinet, additional static or electronic advertising devices shall not be erected, allowed, or permitted that are visible from the scenic highway.

(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for a static or electronic advertising device located on a scenic byway as a static or electronic advertising device located on a scenic highway.

(3) Only routine maintenance as established in Section **4(4)**[~~4(3)~~] shall be performed on a static or electronic advertising device legally in existence on the date of the scenic highway designation.

Section 6.[~~Section 8.~~] Permits, Renewals, and Transfers.

(1) The requirements of this section shall apply to legal **and**[~~,~~] nonconforming[~~, and noncompliant~~] advertising devices within a protected area of an interstate, parkway, national highway system, or federal-aid primary highway.

(2) A permit shall be required from the department for a legal **and**[~~,~~] nonconforming[~~, or noncompliant~~] advertising device located within a protected area.

(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within three (3) months of the initial permit issuance, the initial permit shall be valid until the next renewal period.

(4) An application for a static or an electronic advertising device permit shall be submitted on a completed Application for Static Advertising Device, TC Form 99-221 or Application for Electronic Advertising Device, TC Form 99-222.

(5) Application for an advertising device permit and annual permit renewal shall require a fee pursuant to KRS 177.860(1) and as established in Section **7**[~~9~~] of this administrative regulation.

(6) The timing of issuance of an advertising device permit shall be determined based on the order in which a completed application and payment of applicable fees are made to the department.

(7) The permit issued for the erection of a static or electronic advertising device that has not been constructed prior to the renewal date shall be revoked.

(8) If an advertising device is erected or maintained without an approved permit, the department shall issue a notice of violation to the owner of the device. If the owner of the device cannot be identified, the department shall send notice to the landowner of record.

(9) If a violation is not cured within sixty (60) days of the date of receipt of the notice, the owner or landowner shall be subject to:

(a) A fine of $500 per violation pursuant to KRS 177.990(2); and

(b) Action pursuant to Section **8**[~~10~~] of this administrative regulation.

(10) **Between** [~~Beginning in 2023, between~~] the renewal period of November 1 and December 31, a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, and applicable photographs shall be submitted **beginning in 2023**. An incomplete or inaccurate submission shall not be considered by the department.

(11) Annual permit renewals shall require a fee in the amount of $100 per each static or electronic advertising device pursuant to KRS 177.860(1).

(12) Failure to submit a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees within thirty (30) days of the expiration of the permit shall result in:

(a) The owner of the legal **and**[~~,~~] nonconforming[~~, or noncompliant~~] advertising device being fined $500 per permit violation pursuant to KRS 177.990(2); and

(b) Conditional suspension of the permit.

(13) Upon receipt of a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees and fines within sixty (60) days of the expiration, the suspended permit shall be reinstated if compliant with current law and this administrative regulation.

(14) Failure to submit a completed Advertising Device Annual Permit Renewal Request, TC Form 99-223, applicable photographs, and payment of applicable fees and fines within sixty (60) days of the expiration of the permit shall result in:

(a) Revocation of the permit;

(b) Loss of nonconforming [~~or noncompliant~~] classification for a nonconforming [~~or noncompliant~~] advertising device; and

(c) Action pursuant to Section **8**[~~10~~] of this administrative regulation.

(15) A static or electronic advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location or configuration shall not be changed. A transfer of ownership for an advertising device shall be submitted on a completed Advertising Device or Exchange Credit Ownership Transfer, TC Form 99-224.

(16) Notification of a substantial change to an approved static or electronic advertising device permit shall be submitted **and approved by** [~~to~~] the department prior to work being performed. Substantial change to an advertising device shall include:

(a) Enlargement of the device;

(b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;

(c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(d) The addition of bracing, guy wires, or other reinforcement;

(e) A change in the location of the device;

(f) A change in the direction or configuration of the face or faces; or

(g) The addition of a light or lights, either attached or unattached, to help illuminate a static advertising device structure that previously had no lighting for illumination. The addition of lights may include a numerical display that is changed by an electronic or mechanical process that was not included in the original permit.

(17) Making a substantial change to a device without **prior approval from** [~~first submitting notification to~~] the department constitutes a violation of this administrative regulation and shall result in action pursuant to Section **8**[~~10~~] of this administrative regulation.

(18) Issuance of a permit under this administrative regulation

shall not create a contract or property right in the permit holder.

Section 7.[~~Section 9.~~] Permit Fees.

(1) **Permit fees and annual renewal fees shall be assessed pursuant to KRS 177.860 beginning on January 1, 2023[~~Beginning on January 1, 2023, pursuant to KRS 177.860, permit fees and annual renewals fees shall be assessed~~]**, including:

(a) $250 for an Application for Electronic Advertising Device permit;

(b) $150 for an Application for Static Advertising Device permit; and

(c) $100 for the Advertising Device Annual Permit Renewal Request.

(2) A fee established by this section shall be payable by cashier's check or electronic payment.

(3) A fee paid to the department established in this section shall be nonrefundable.

Section 8.[~~Section 10.~~] Notice of Violations; Appeals.

(1) The department shall notify the owner of an advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(2) If device continues to be in violation thirty (30) days after notice, the department shall notify the landowner, the advertiser, and the owner of an advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(3) The landowner, the advertiser, or the owner of an advertising device aggrieved by the findings of the department may request an administrative hearing. An administrative hearing shall be pursuant to KRS Chapter 13B.

(a) The request shall be in writing and within thirty (30) days of the certified letter.

(b) A request for a hearing shall thoroughly state the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(4) If the landowner, the advertiser, or the owner of an advertising device fails to request an administrative hearing or fails to cure the violation within thirty (30) days of notice, the department shall proceed pursuant to KRS 177.870.

Section 9.[~~Section 11.~~] Penalties.

(1) The owner of an advertising device in violation of a provision of KRS Chapter 177 or of this administrative regulation shall be assessed a penalty of $500 per violation pursuant to KRS 177.990(2).

(2) The department shall deny or revoke a permit if the permit application or renewal contains false or materially misleading information.

Section 10.[~~Section 12.~~] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Static Advertising Device", TC Form 99-221, July 2021;

(b) “Application for Electronic Advertising Device”, TC Form **99-222, October [~~99-221, July~~]** 2021;

(c) “Advertising Device Annual Permit Renewal Request”, TC Form 99-223, **October [~~July~~]** 2021;

(d) "Advertising Device or Exchange Credit Ownership Transfer", TC Form 99-224, **October [~~July~~]** 2021; and

(e) The formal designation of interstates, parkways, national highway system, and federal-aid primary highways by the Kentucky Transportation Cabinet may be found on the department’s Web site at: http://maps.kytc.ky.gov/PAFOA/.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JIM GRAY, Secretary

JAMES BALLINGER, State Highway Engineer

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 10, 2021 at 10:45 a.m.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email jon.johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes amended provisions to correct first amendment constitutional issues as prescribed by the 6th Circuit Federal Court and defines prohibited and conforming activities relative to outdoor advertising in protected areas.

(b) The necessity of this administrative regulation: The administrative regulation is required by KRS 177.860 and as further demonstrated by directive of the General Assembly to promulgate the amended regulation herein.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to KRS 177.860 by establishing parameters of both prohibited and conforming activities relative to advertising devices and the safety of the users of the highways.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of advertising devices located within the protected area.

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

(a) How the amendment will change this existing administrative regulation: The amended regulation removes the elements found by the court as being unconstitutional and provides the framework for an alternative, content-neutral compensation based regulatory model.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the framework of an enacted content neutral compensation based regulatory model.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation amendment furthers the statutory intent of establishing a content neutral, compensation based regulatory scheme.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will further establish parameters of both prohibited and conforming activities relative to advertising devices in protected areas.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Advertising Device Owners, Landowners, Advertisers, KYTC, County & City Municipalities

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Advertising Device Owners will be required to submit annual permit renewal documentation and the associated annual device renewal fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities:

Advertising Device Owners: Applicable fees as established by KRS 177.860.

Landowners: There are no known direct financial impacts

Advertisers: There are no known direct financial impacts

KYTC: Approximately $350,000 annually

County & City Municipalities: There are no know direct financial impacts.

(c) As a result of compliance, what benefits will accrue to the entities: Compliant industry stakeholders will be provided the benefit and protection of conducting business within a regulated industry.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: $350,000.

(b) On a continuing basis: $350,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Statutory authority providing for the assessment of permit fees, pursuant to KRS 177.860.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will continue be administered pursuant to terms of the Federal/State Agreement. The statutory authorization to assess permit fees for advertising devices is expected to cover the administrative costs relative to regulating advertising devices.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Statutory authority providing for the assessment of permit fees, KRS 177.860 was enacted. This administrative regulation further prescribes the application of the fee assessment.

(9) TIERING: Is tiering applied? No, all advertising devices will be treated 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? KYTC Department of Highways, Division of Maintenance, KYTC District Offices, KYTC Office of Legal Services, and County and City Local Municipalities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 177.860 and 23 U.S.C. 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. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. For local government, costs should be minimal as the process is administratively driven and the regulatory actions will be performed within the context of DUI prosecutions.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately $300,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately $300,000.

(c) How much will it cost to administer this program for the first year? Approximately $350,000.

(d) How much will it cost to administer this program for subsequent years? Approximately $350,000.

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:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Telehealth Services
(Amended After Comments)

900 KAR 12:005. Telehealth terminology and requirements.

RELATES TO: KRS 205.510, 205.559, 205.5591, 211.332(2)-(5), **304.17A-005(23),** 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

STATUTORY AUTHORITY: KRS 194A.105, 211.334(1)(d), 211.336(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.334 and 211.336 require the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to establish a telehealth terminology glossary to provide standard definitions for all health care providers who deliver health care services via telehealth, all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors; establish minimum requirements for the proper use and security of telehealth including requirements for confidentiality and data integrity, privacy, and security, informed consent, privileging and credentialing, reimbursement, and technology; and establish minimum requirements to prevent waste, fraud, and abuse related to telehealth.

Section 1. Definitions. (1) "Department" means Department for Medicaid Services.

(2) "Division" means Division of Telehealth Services.

(3) **"Health care provider" is defined by KRS 304.17A-005(23), unless the provider or service is otherwise regulated by KRS 205.8451(7).**

(4)[~~(3)~~] "Health care service" is defined by KRS 211.332(2).

(5)[~~(4)~~] "Professional licensure board" is defined by KRS 211.332(3).

(6)[~~(5)~~] **"**State agency authorized or required to promulgate administrative regulations relating to telehealth" is defined by KRS 211.332(4).

(7)[~~(6)~~] "Telehealth" or "digital health" is defined by KRS 211.332(5).

Section 2. Compliance. (1) Health care providers performing a telehealth or digital health service shall:

(a) Maintain confidentiality of patient medical information in accordance with KRS 311.5975;

(b) Maintain patient privacy and security in accordance with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. secs. 1320d to 1320d-9, unless waived by the applicable federal authority;

(c) Obtain patient informed consent in accordance with KRS 311.5975 and KRS 304.40-320;

(d) Secure credentialing if required by a third party or insurer or other payor;

(e) **Establish guidelines to contact, refer, and obtain treatment for a patient who needs emergent or higher level-of-care services provided by a hospital or other facility [~~Obtain privileges by hospitals or facilities to admit and treat patients~~]**;

(f)1. Utilize the appropriate current procedural terminology (CPT) or health care common procedure coding (HCPCS) code and place of service (POS) code "02" to secure reimbursement for a professional telehealth service; or

2. Utilize appropriate telehealth service code, if a CPT or HCPCS code is not available or not used for that service, according to customary practices for that health care profession, including the use of any telehealth modifiers or alternate codes;

(g) Utilize non-public facing technology products that are HIPAA compliant;

(h) As appropriate for the service, provider, and recipient, utilize the following modalities of communication delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. secs. 1320d to 1320d-9:

1. Live or real-time audio and video synchronous telehealth technology;

2. Asynchronous store-and-forward telehealth technology;

3. Remote patient monitoring using wireless devices, wearable sensors, or implanted health monitors;

4. Audio-only telecommunications systems; or

5. Clinical text chat technology when:

a. Utilized within a secure, HIPAA compliant application or electronic health record system; and

b. Meeting:

(i) The scope of the provider's professional licensure; and

(ii) The scope of practice of the provider; and

(i) Comply with the following federal laws to prevent waste, fraud, and abuse relating to telehealth:

1. False Claims Act, 31 U.S.C. § 3729-3733;

2. Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); and

3. Physician Self-Referral, Section 1877 of the Social Security Act (42 U.SC. § 1395nn).

Section 3. Incorporation by Reference.

(1) "Telehealth Terminology Glossary", July 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Telehealth Services, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from its Web site at https://telehealth.ky.gov.

ANDREW BLEDSOE, Deputy Executive Director
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 4, 2021

FILED WITH LRC: November 12, 2021 at 8:00 a.m.

CONTACT PERSON: Krista Quarles, Policy Specialist, 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: Kim Minter or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a telehealth terminology glossary and establishes requirements to prevent waste, fraud, and abuse.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a telehealth glossary to be utilized by state agencies when promulgating telehealth administrative regulations, and by health care providers and payors to understand telehealth in the delivery of health care services, and establishes requirements to prevent waste, fraud, and abuse in KRS 211.334 and 211.336 and required by HB 140, Ky. Acts Ch. 67, from the 2021 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes. The administrative regulation conforms to the content of the authorizing statutes by establishing a telehealth glossary and requirements for use.

(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 a telehealth glossary and requirements. KRS 211.334(1) authorizes the cabinet, in consultation with the Division of Telehealth Services within the Office of Health Data and Analytics, to provide guidance and direction to providers delivering health care services using telehealth or digital health; and to promote access to health care services provided via telehealth or digital health.

(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: This increase will impact those payors, providers, members, and recipients who are regulated by state government. In the early part of the pandemic, telehealth utilization increased and was about 78 times higher than previous levels. Over the course of the COVID-19 pandemic, telehealth usage appears to have stabilized at levels that are about 38 times higher than pre-pandemic telehealth utilization. The Cabinet for Health and Family Services anticipates that increased telehealth utilization will be an ongoing feature of the healthcare system.

This administrative regulation is being further amended in response to comment to add a definition for health care provider, and clarify the responsibility of health care providers providing telehealth in addressing how to secure higher level of care services – including emergent services – for patients.

(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: All health care providers who deliver health care services via telehealth, all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors should utilize the glossary for consistency when referencing telehealth terminology.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): No cost is imposed on the entities regulated by this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Telehealth Terminology Glossary will assist providers, consumers, patients, and stakeholders in understanding telehealth within the health care system as well as standardizing telehealth language across all state agencies who promulgate telehealth legislation.

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

(a) Initially: The department anticipates that it will incur no additional expenses in the implementation of this administrative regulation in the first year of operation.

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in implementing this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Centers for Medicare and Medicaid Services (CMS) funding, state restricted funding, and MCO capitation fees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees. This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as telehealth requirements are applied equally to all affected.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

2. State compliance standards. Meeting federal standards by complying with privacy, security, waste, fraud, and abuse requirements.

3. Minimum or uniform standards contained in the federal mandate. Meeting federal standards by complying with privacy, security, waste, fraud and abuse requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 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 Department for Medicaid Services (DMS) and all state agencies authorized or required to promulgate administrative regulations relating to telehealth, and all payors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.105, 205.510, 205.559, 205.5591, 211.332(2)-(5), 211.334(1)(d), 211.336(3), 304.17A-005(23), 304.17A-138, 304.40-320, 311.5975, 31 U.S.C. § 3729-3733, 42 U.S.C. § 1320a-7b(b), 42 U.S.C. secs. 1320d to 1320d-9, 42 U.S.C. § 1395nn

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

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

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in administering this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in administering this administrative regulation in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amended After Comments)

902 KAR 10:120. Kentucky public swimming and bathing facilities.

RELATES TO: KRS Chapter 13B, 211.015, 211.090, 211.210, 211.220 [~~211.180~~], 211.990(2), 322.110, 323.020, 29 C.F.R. 1910.119, 15 U.S.C. 8003

STATUTORY AUTHORITY: KRS [~~Chapter 13B,~~] 194A.050(1), 211.180(1) [~~211.090(3), HB 492 (1988 Acts), EO 96-862~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet[~~HB 492 (1988 Acts) directs the Cabinet for Health Services to regulate the design and construction of water distribution and treatment systems for swimming pools~~]. KRS 211.180 authorizes[~~directs~~] the cabinet [~~for Health Services~~] to adopt administrative regulations relating to public facilities, and their operation and maintenance in a safe and[~~,~~] sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform standards for public swimming pools and [~~other swimming or~~] bathing facilities. [~~The function of this administrative regulation is to assure the proper design and construction of new facilities as related to water distribution and treatment systems, and the proper operation and maintenance of all such facilities in a manner which will protect the public health. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.~~]

Section 1. Definitions. (1) "Accessible" means, if applied to a fixture, connection, appliance or equipment, having access to it, but may require the removal of an access panel, door or similar obstruction.

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor or other device, and the flood level rim of the receptacle.

(4) "Alkalinity" or "total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (ppm).

(5) "Approved" means that which is acceptable to the cabinet.

(6) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(7) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(8) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.

(9) "Bather" means a person using a public swimming and bathing facility.

(10) "Cabinet" is defined by KRS 211.015(a).

(11) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(12) "Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that must be periodically replaced.

(13) "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.

(14) "Equalizer line" means the connection from the skimmer housing to the pool, spa, or hot tub below the weir box, which is sized to satisfy pump demand and prevent air lock or loss of prime and contains a float valve assembly and pop-up valve.

(15) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

(16) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.

(17) "Filter aid" means an enhancement to the efficiency of the filter media.

(18) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

(19) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit.

(20) "Filtration rate" means the rate of water flow through a filter while in operation.

(21) "Float valve assembly" means a mechanism designed to disengage the skimmer in order to prevent air from entering the pump if the water level drops below the skimmer level.

(22) "Flow meter" means a device that measures the flow of water through piping.

(23) "Head loss" means the total pressure drop between the inlet and the outlet of a component.

(24) "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.

(25) "Hydrojet" means a fitting which blends air and water creating a high velocity, turbulent stream of air enriched water.

(26) "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.

(27) "Main outlet" means an outlet fitting at the deepest point of the horizontal bottom of a pool through which water passes to a

recirculating pump or surge tank. It is often referred to as a "main drain".

(28) “Modulating valve” means a valve that automatically regulates the flow of water from the main drain through the use of a float ball.

(29) "Perimeter overflow system" means a channel at normal water level that extends completely around the pool perimeter and is used to remove surface debris, also known as an overflow or scum gutter.

(30) “Perlite filter” means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that must be periodically replaced.

(31) “Play feature” means a structure or feature that is added to a pool for the purpose of entertainment.

(32) “Plunge pool” means a pool or area within a pool designed as the termination point for a water slide or water ride.

(33) “Pop-up valve” means a mechanism located under the float valve assembly that opens to allow water to reach the pump when the float valve is activated.

(34) “Positive shutoff valve” means a valve that completely stops the flow of water.

(35) "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.

(36) "Public swimming and bathing facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing. It does not include a pool at a private single family residence intended only for the use of the owner and guests.

(37) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(38) "Septum" means that part of the filter element consisting of cloth, or closely woven fabric or other porous material on which the filter cake is deposited.

(39) “Skimmer” means a device designed to continuously remove surface film and water and return it through the filter.

(40) “Spray pad” means an area with aquatic play features that spray or drop water for the purpose of wetting people, and are designed so that there is no accumulation or ponding of water on the ground, and includes both recirculating and non-recirculating water systems.

(41) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(42) "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of a pump.

(43) "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available chlorine that is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(44) “Surge tank” means a storage vessel within the pool recirculation system used to retain the water displaced by bathers.

(45) "Total discharge head" means the amount of water that a pump will raise water above its center line.

(46) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(47) "Total residual chlorine" means the arithmetical sum of free available chlorine and combined chlorine, and is composed of the following components:

(a) Free available chlorine, which is the amount of chlorine available to inactivate microorganisms and that has not reacted with ammonia, nitrogenous material, and other contaminants in **facility[~~swimming pool~~]** water; and

(b) Combined chlorine (also called "chloramine"), which is the amount of chlorine that has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds.

(48) "Total suction head" means the amount of water that a pump will lift by suction.

(49) "Turnover rate" means the time in hours or minutes, required for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(50) “Wading pool” means a pool or area within a pool where the water depth is twenty-four (24) inches or less.

(51) “Weir box” means an overflow system placed at normal operating water surface level to remove surface debris and does not form a continuous loop around the pool perimeter.

Section 2. Submission of Plans and Specifications for Approval. (1) No person shall construct, alter, or reconstruct a public swimming and bathing facility until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.

(2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to 902 KAR 10:121.

(3) The front page of the plans submitted for review and approval shall contain the:

(a) Name of the swimming and bathing facility;

(b) Location by city and county;

(c) Name and contact information for the facility owner;

(d) Name of the installer; and

(e) Name of the engineer, architect, or person preparing the plans.

(4) Plans submitted by an engineer or architect shall bear the individual’s official seal.

(5) Plans and specifications on public swimming and bathing facilities constructed by the state or local government, or for a facility with surface area greater than 1,600 square feet shall be prepared by an engineer or architect registered in the State of Kentucky.

(6) The plans shall be:

(a) Drawn to scale;

(b) Accompanied by proper specifications to permit a comprehensive review of the plans including the piping and hydraulic details; and

(c) Include:

1. A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

2. A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

3. The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, diving boards, safety equipment, and other related equipment; and

4. Drawing of equipment room showing placement of equipment.

(7) One (1) set of approved plans shall be kept at the job site and available for inspection.

(8) Upon completion of recirculation piping system construction and prior to such piping being air pressure tested at ten (10) pounds per square inch of pressure for fifteen (15) minutes and covered, the owner or builder shall contact the cabinet for inspection.

(9) Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.

(10) The facility shall not be used before receiving a final inspection and written approval from the cabinet.

(11) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(12) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet.

Section 3. Water Supplies. (1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all water-using fixtures and

equipment at the facility, and be capable of providing enough water to raise the water level in swimming, diving, or wave pools, and water slide plunge pools, at least one (1) inch in three (3) hours.

Section 4. Water Quality and Sanitary Requirements for Bathing Beaches. (1) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the bathing beach area and the watershed.

(2) Physical quality. The following characteristics shall not be present in the beach area or watershed:

(a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; and

(b) Hazardous substances being discharged into bathing beach water or watershed.

(3) Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:

(a) It shall meet the requirements of 401 KAR 10:031. Satisfactory bacteriological results shall be obtained before approval for construction is considered; and

(b) There shall be no sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.

(4) Chemical quality. There shall be no discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

Section 5. Sewage and Wastewater Disposal. (1) Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer.

(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085.

(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. Such drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment for the breeding of insects.

(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable, to a system approved by the cabinet.

Section 6. Refuse Disposal. (1) All refuse at a public swimming and bathing facility shall be disposed of in a manner approved by the Energy and Environment Cabinet in KAR Title 401.

(2) An adequate number of refuse containers, with tight fitting lids shall be provided at readily accessible locations at all public swimming and bathing facilities.

(3) Refuse containers in women's restrooms shall be kept covered.

(4) Bulk refuse storage areas shall be designed and maintained to prevent rodent harborage.

(5) Bulk refuse containers shall be:

(a) Of approved design and construction;

(b) Kept closed; and

(c) Placed upon an impervious surface within a suitable enclosure to prevent access by animals.

Section 7. Facility Design and Construction. (1) All public swimming and bathing facilities, and attendant structures such as bathhouses, dressing rooms, or restrooms, except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.

(2) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet. Within such limits of safe swimming there shall be no boating, underwater obstructions, or other hazards that may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.

(3) If diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats or inflatable features where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.

(4) Depth markings and lane lines.

(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility if possible and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:

1. At the points of maximum and minimum depths;

2. At the point of change of slope between deep and shallow portions (transition point);

3. At intermediate two (2) feet increments of water depth; and

4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.

(b) Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet as measured peripherally.

(c) Depth markers shall be in Arabic numerals at least four (4) inches high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be plainly visible to persons in the facility.

(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.

(e) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet). The line shall be placed one (1) foot toward the shallow end from where the break occurs.

Section 8. Facility Water Treatment Systems. (1)(a) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities except bathing beaches.

(b) All system components, including piping, shall bear the **NSF International (NSF)[~~National Sanitation Foundation~~]** potable water (NSF-pw) mark.

(c) Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.

(2) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control and a flow meter shall be provided in the recirculation pump discharge piping.

(b) The turnover rate shall be:

Type of Facility	Turnover Required
Diving pools	8 hours or less
Wading pools, Spas, Therapy pools, Spray pad holding tanks, Facility equipped with a spray feature not providing additional filtered and disinfected water to the spray feature	30 minutes or less
Wave pools, Lazy rivers, Water rides	2 hours or less
Vortex pools, Plunge pools	1 hour or less
All other pools	6 hours or less

(c) Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.

(d) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.

(e) The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;

2. Seventy (70) feet for pressure sand or cartridge filters; or

3. Eighty (80) feet for pressure diatomaceous earth filters and

perlite filters.

(f) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(g) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(h) A compound vacuum-pressure gauge or vacuum gauge shall be installed on the suction side of the pump.

(i) A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(j) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(k) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.

(3) Water heaters shall be installed at all indoor swimming and bathing facilities, and shall comply with the following:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

(d) An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to swimming and diving pools and in excess of 104 degrees Fahrenheit for spas shall be provided, and be accessible only to the facility operator;

(e) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code;

(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code;

(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and

(j) All heaters shall meet the latest standards of applicable recognized testing agencies.

(4) A flow meter shall be:

(a) Located so that the rate of recirculation may be easily read;

(b) Installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence, except for those specifically designed without separation parameters; and

(c) Installed on each recirculation system, spray pad feature, waterslide, any other type of spray feature, and on multiple filtration units.

(5) Vacuum cleaning system.

(a) A vacuum cleaning system shall be:

1. Provided for all facilities except beaches; and

2. Capable of reaching all parts of the facility bottom;

(b) A vacuum system that utilizes the attachment of a vacuum hose to the suction piping through the skimmer may be provided;

(c)1. If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting shall be provided:

a. Eight (8) to twelve (12) inches below the normal water level; and

b. With a cap or plug that is not removable by bathers.

2. Piping from this connection shall be:

a. To the suction side of the pump ahead of the hair and lint strainer;

b. At least one and one-half (1 1/2) inches in diameter; and

c. Equipped with a control valve near the junction with the pump suction line.

3. The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning;

(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom; and

(e) Vacuum systems shall only be used when the facility is closed to bathers.

(6) Piping, skimmer and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.

(b) All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.

(c) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping and ten (10) feet per second in pressure piping.

(d) Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.

(e) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;

2. Surge tank drain and overflow lines;

3. Pump discharge to waste lines; and

4. Gutter bypass to waste lines.

(7) Inlets.

(a) Each inlet shall be directionally adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except in facilities equipped with skimmers it shall be in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots.

(d) Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat.

(e) Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.

(f) Inlets shall be placed completely around the pool with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool.

(g) The number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15), any fraction thereof would represent one (1) additional inlet.

(h) Pools greater than forty-five (45) feet wide shall be equipped with floor inlets in a grid pattern located no more than seven and five-tenths (7.5) feet from a wall and no more than fifteen (15) feet apart. The grid must form a continuous loop with no reduction in loop pipe sizing.

(i) A minimum of two (2) inlets is required on all pools, holding tanks, and bathing facilities regardless of size.

(j) At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.

(k) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.

(8) Outlets.

(a) All facilities, including holding tanks, shall be provided with a minimum of two (2) main outlets at the deepest horizontal point plumbed in parallel to permit the facility to be completely and easily drained.

(b) Openings and grates shall:

1. Conform to 15 U.S.C. 8003;

2. Be covered by a proper grating that is not removable by bathers;

3. Be at least four (4) times the area of the main outlet pipe;

4. Have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2)

feet per second at maximum flow; and

5. The maximum width of grate openings shall be one-fourth (1/4) inch;

(c) Additional outlets shall be provided in all facilities where the width of the facility is more than sixty (60) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series;

(d) A hydrostatic relief valve may be provided for in-ground swimming and diving pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer; and

(e) Main outlet piping shall be sized for removal of the water through it at a rate of at least 100 percent of the design recirculation flow rate at velocities specified in subsection (6)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(9) Perimeter overflow systems.

(a) Swimming and bathing facilities with a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system.

(b) A perimeter overflow system shall:

1. Extend completely around the facility;

2. Permit inspection, cleaning, and repair;

3. Be designed so that no ponding or retention of water occurs within any portion of the system;

4. Be designed to prevent entrapment of bathers or the passage of small children into an enclosed chamber;

5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;

6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;

7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate;

8. Discharge to the recirculation system;

9. Be provided with a minimum of two (2) outlet pipes that will not allow the overflow channel to become flooded when the facility is in normal use;

10. Require additional outlet pipes provided at one (1) per 150 lineal feet of perimeter overflow system or fraction thereof; and

11. Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.

(10) All facilities that have perimeter overflow systems shall have a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, surge tank, or a combination of these. Main drain piping shall terminate eighteen (18) inches above the surge tank floor and be equipped with a modulating valve and a positive shutoff valve. Surge capacity for a diatomaceous earth (DE) filter is measured eighteen (18) inches above the filter media and the bottom of the gutter pipe.

(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:

(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof with a minimum of two (2) skimmers provided, except for spas, holding tanks, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.

(b) Skimmers shall be located to minimize interference with each other;

(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate;

(d) Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow;

(e) Each skimmer shall be provided with an equalizer line at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve and cover that conforms to 15 U.S.C. 8003;

(f) A basket that can be removed without the use of tools and through which all overflow water must pass; and

(g) All pools not equipped with a perimeter overflow system shall have a smoothly contoured handhold coping not over two and one-half (2 1/2) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.

(12) All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:

(a) Discharge through an air gap of at least six (6) inches to a surge tank or a vacuum filter tank. If make-up water is added directly to the facility, the fill-spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and

(b) Through piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.

(13) Filtration.

(a) Filters shall comply with the following:

1. Pressure filters shall have:

a. Pressure gauges;

b. An observable free fall, or a sight glass installed on the backwash discharge line; and

c. A manual air-relief valve at the high point;

2. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;

3. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and

4. Filter media shall be listed as NSF approved.

(b) Each facility shall have separate filtration and treatment systems.

(c) Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day except if the facility is closed for repairs or at the end of the swimming season.

(d) Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.

(e) At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.

(f) The filter system shall be designed with necessary valves and piping to permit filtering to the pool.

(g) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(h) Diatomaceous earth filters.

1. The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoating;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water;

5. All filters shall be equipped for cleaning by one (1) or more of the following methods: backwashing; air-pump assist backwashing; spray wash; water pressure to wash vacuum filter; or agitation; and

6. Perlite may be used in filters listed by NSF for perlite, but it may not be substituted for diatomaceous earth without NSF listing.

(i) Vacuum sand filters.

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute, whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(j) Cartridge filters.

1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;

2. Cartridge filters shall only be used on indoor pools;

3. The design filtration rate shall not exceed fifteen hundredths (0.15) gallons per minute per square foot of filter surface area; and

4. A clean duplicate set of cartridges shall be maintained at the facility.

(14) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control**[, except as stated in paragraph (e) of this subsection]**.

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of eight (8) ppm or two and seven-tenths (2.7) pounds per day chlorine gas or its equivalent for each 10,000 gallons of pool volume for outdoor facilities; or three (3) ppm or one (1) pound per day for chlorine gas or its equivalent for each 10,000 gallons of pool volume for indoor facilities based on the turnover rates specified in subsection (2)(b) of this section;

2. The equipment for supplying chlorine shall not be controlled by a day-date clock;

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter unless the chlorine injection point is located within the surge tank;

4. Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.50) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment;

5. Supplemental NSF listed ultraviolet (UV) light disinfection systems shall:

a. Be provided on all splash pads with a recirculating water system;

b. Be installed on a bypass line; and

c. Equipped with a flow indicator; and

d. May be used on other facilities as supplemental disinfection.

6. Ozone may be used as a supplement to chlorination or bromination. Ozonation equipment will be considered by the cabinet on a case-by-case basis; and

7. No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than five hundredths (.05) ppm at all times either in the vicinity of the ozonator or at the pool water surface.

(c) If positive displacement pumps (hypochlorinators) are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) Gas chlorinators shall only be used in a pre-existing facility and shall comply with applicable sections of 29 C.F.R. 1910.119.

(e) pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.

(15)(a) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of **[at least the following:**

1.] a DPD (Diethyl-P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents are not acceptable**[; and**

2. At least five (5) chlorine color standards and five (5) pH color standards].

(b) Test kits shall be used to determine the total residual chlorine either directly or by summation of free chlorine and combined chlorine test results. Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm.

(c) pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4).

(d) Both tests shall be accurate to within two-tenths (0.2) units.

(e) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.

Section 9. Operational Water Quality Standards. (1) Disinfectant residuals for swimming and diving pools, wading pools, water slides, and wave pools:

(a) Chlorine residual shall be maintained between one (1) and five (5) ppm as free available chlorine.

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant.

(c) Pools stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one **and five-tenths (1.5)[(1)]** to five (5) ppm free available chlorine residual; and

3. Cyanuric acid concentration not to exceed fifty (50) ppm.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) ppm.

(2) Disinfectant residuals for spas:

(a) Chlorine residual shall be maintained between one (1) and five (5) ppm as free available chlorine;

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant; and

(c) If the level of chloramines exceeds two-tenths (0.2) ppm, superchlorination is required. During the superchlorination process and until such time as free chlorine levels return to five (5) ppm or less, the facility shall be closed.

(3) The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(4) Turbidity. Facility water shall have sufficient clarity at all times so that:

(a) A black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the pool; and

(b) The openings of the main outlet grate are clearly visible by an observer on the deck;

(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 ppm, as determined by suitable test kits.

(6) Temperature.

(a) The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76) degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes as competition, physical therapy, or instruction of children. Variances may be approved if proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated, and that the variance will not jeopardize public health.

(b) Air temperature at an indoor facility shall be higher than the water temperature, except for spas.

(c) Water temperatures for any facility including spas shall not exceed 104 degrees Fahrenheit.

(d) All facilities with heated water shall have at least one (1) break proof thermometer located within the facility water in a conspicuous location. The thermometer shall be securely mounted to prevent tampering by bathers.

(7) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, temperature, and pH shall be checked

at least three (3) times daily with a greater frequency if bather load or climatic conditions warrant.

(b) Turbidity shall be checked daily, or more often as needed.

(c) Alkalinity, cyanuric acid (if used) shall be checked weekly, or more often as needed.

(8) All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.

Section 10. General Facility Operation and Maintenance. (1) All facilities shall be maintained:

(a) Free from sediment and debris; and

(b) In good repair.

(2) Decks shall be kept clean. Indoor decks shall be disinfected at least weekly.

(3) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other debris. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the perimeter overflow or skimmer system.

(4) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(5) Bather preparation facilities.

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily.

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair.

(c) Floors shall be maintained in a nonslip condition.

(d) Soap dispensers shall be filled and operable.

(e) Adequate supplies of toilet tissue, disposable hand drying towels, or suitable hand drying devices shall be maintained.

(6) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(7) Safety. All public swimming facilities shall have adequate enclosures that meet the specifications of Department of Housing, Buildings and Construction. Doors or gates in the facility enclosure shall be kept closed and locked if the facility is closed.

(8) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(9) Diving equipment, ladders, hand rails, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(10) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility;

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day; and

(c) Recirculation pumps. The pump shall not be throttled on the suction side (except the bottom drain line valve) during normal operation, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(11) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened as necessary, to remove air which collects in the filter, and following each backwash; and

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) to one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(12) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(13) Flow meters. Flow meters shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(14) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(15) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(16) Chlorinated cyanurates. The use of chlorinated cyanurates is prohibited.

(17) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH;

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical;

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH;

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical; and

(e) The cabinet shall be consulted in the event of unusual pH problems including corrosion, scaling, or wide fluctuations in pH.

(18) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose and removed by the suction cleaner and filtration system.

(19) Miscellaneous chemicals.

(a) Chemicals other than approved disinfectants shall be used only with the advice and under the supervision of the cabinet;

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat, and in a clean, dry, and well-ventilated place that prevents unauthorized access to the chemicals;

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions; and

(d) If polyphosphates are used for sequestering iron, the

concentration of polyphosphates shall not exceed ten (10) ppm.

(20) Equipment rooms.

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room that affords protection from the weather, prevents unauthorized access, has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and

(e) The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

(21) Maintenance of bathing beaches.

(a) Beach areas shall be maintained free of litter and water borne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.

(b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas, and shall extend beneath the water of all wading and swimming areas; and

(c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis and immediately after high water conditions for floating or sunken debris, obstructions at diving areas, and high water turbidity, which may present safety hazards to bathers.

Section 11. Facility Records. (1) The operator of each facility shall keep a daily record of information regarding operation of the facility on the DFS-352, Swimming Pool Log Sheet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records shall be kept showing daily or weekly results, as applicable, for:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level (if applicable); and

(c) Equipment malfunctions.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

Section 12. Personnel. (1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times when the facility is open for use.

(2) Lifeguards.

(a) Lifeguards shall be on duty at a facility that has 2,000 square feet or greater of water surface area at a rate of one (1) per 2,000 square feet or fraction thereof.

(b) Lifeguards shall be provided at all facilities, regardless of water surface area, that allow bathers seventeen (17) years of age or under to enter the facility area without a responsible adult present at a rate of one (1) lifeguard per 2,000 square feet of water surface area or fraction thereof.

(c) All facilities that are not required to provide lifeguards must post and enforce the following rules at all entrance points: “No Lifeguard on Duty” and "No person may enter the facility area alone or swim alone."

(d) All beaches shall provide lifeguards at a rate of one (1) per 100 linear feet of beach front or fraction thereof, and a minimum of one (1) per attraction, with additional lifeguards provided to ensure all areas surrounding the attraction are clearly visible at all times.

(e) **This is the minimum lifeguard coverage acceptable under this administrative regulation. Additional lifeguards may be required depending on bather load, bather activities, size, and configuration of the facility, and the amount of surface area for shallow and deep water areas, emergencies, and the lifeguard’s ability to see bathers.**

(f) Lifeguards shall comply with the following:

1. Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;

2. Lifeguards shall be dressed in swimming attire; and

3. Lifeguards assigned to the supervision of the facility shall not be subject to duties that would distract their attention from proper observation of persons in the facility area, or that would prevent immediate assistance to persons in distress in the water.

Section 13. Safety Equipment. (1) Facilities requiring lifeguards shall have a minimum of one (1) elevated lifeguard chair per on-duty lifeguard. A lifeguard chair shall be provided for each 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.

(2) Beaches shall be provided with an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The chairs shall be located on the beach to provide a clear view of all areas under surveillance and to provide the quickest response time.

(3) One (1) unit consisting of the following lifesaving equipment shall be provided for 2,000 square feet of water surface area and an additional unit for each additional 2,000 square feet or fraction thereof:

(a) A U.S. Coast Guard approved ring buoy no more than fifteen (15) inches in diameter with a three-sixteenths (3/16) inch rope attached that measures one and one-half (1 1/2) times the maximum pool width;

(b) **Rescue tubes may be used when lifeguards are present;**

(c) A shepherd's hook securely attached to a one piece pole not less than twelve (12) feet in length; and

(d)[(c)] One (1) backboard with head immobilizer and at least three (3) straps, for back and neck injuries.

(4) Facilities limited to small spas, with less than 144 square feet of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.

(5) In addition to subsection three (3) of this section, a beach shall provide the following lifesaving equipment:

(a) Paddle board or surfboard;

(b) At least one (1) lifeboat, and one (1) unit of lifesaving equipment; and

(c) A torpedo shaped buoy.

(6) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.

(7) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove such equipment from its established location. This equipment at beaches shall be located at each lifeguard chair, with the lifeboat required by subsection (5)(b) of this section being located at the most centrally stationed lifeguard chair.

(8) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(9) All facilities shall provide an emergency automatic pump shut off located adjacent to the telephone.

(10)(a) All facilities shall have a non-pay landline telephone**, continuously connected to a power source and operational at all times,** capable of direct dialing 911 without going through a switchboard located on the deck that is readily accessible and conspicuously located. **A cordless telephone shall be prohibited.**

(b) A two (2) way radio communication system to a manned telephone system may be substituted at an isolated beach facility.

(c) The **address of the facility and the** telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

(11) All drownings and injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health.

Section 14. Spectator and Bather Administrative Regulations. (1) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility shall be refused to a person:

1. Having any contagious disease, infectious conditions such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;

2. Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and

3. Under the influence of alcohol, illegal substances, or exhibiting erratic behavior;

(b) No food, drink, gum, tobacco, or vapor producing product, will be allowed other than in specially designated and controlled sections of the facility area;

(c) Personal conduct within the facility shall assure that the safety of self and others is not jeopardized;

(d) No running and no boisterous or rough play (except supervised water sports) are permitted;

(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water is not permitted;

(f) Glass, soap, or other material that creates hazardous conditions or interferes with efficient operation of the facility shall not be permitted in the facility or on the deck;

(g) All apparel worn in the facility shall be clean;

(h) Diving in shallow water is not permitted;

(i) Caution shall be exercised in the use of diving boards; and

(j) **Service animals may be allowed in the deck area but shall be excluded from the water[**~~Animals shall be excluded from the facility area~~].

(3)[~~(2)~~**]** Due to the nature of bathing beaches, subsection (2)(c), and (f) of this section shall not apply. Subsection (2)(a) and (b) of this section shall be enforced at the discretion of the facility operator, except subsections (2)(a)2. and 3., which shall be enforced at all facilities.

(4)[~~(3)~~**]** In addition to the requirements of subsection (2) of this section, a caution sign shall be mounted adjacent to all spas and contain the following warnings:

"CAUTION

Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high or low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.

Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.

Do not use at water temperatures greater than 104 degrees Fahrenheit.

Do not use alone.

Unsupervised use by children is prohibited.

Enter and exit slowly.

Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.

Long exposure may result in nausea, dizziness, fainting, or death.

Keep all breakable objects out of the area.

Shower before entering the spa."

(5)[~~(4)~~**]** A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.

Section 15. Swimming Suits and Towels Furnished by Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.

Section 16. Facility Inspection. (1) Seasonal facilities.

(a) All owners or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this administrative regulation except in instances where the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet may require one (1) of the full facility inspections to be performed prior to a facility's opening; and

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation indoor facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.

(3) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(4) Facilities other than beaches shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of:

(a) Disinfectant residual testing (free available residual) and combined disinfectant in ppm;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing (if cyanuric acid stabilizers are used);

(e) Turbidity assessment;

(f) Temperature testing (if heated water facility);

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris; and

(i) Other checks as necessary.

(5) Beaches shall be monitored once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation, bacteriological water sampling, and safety checks as necessary.

(6) The cabinet may make as many additional inspections and reinspections as necessary for the enforcement of this administrative regulation.

(7) When an agent of the cabinet makes an inspection of a public swimming and bathing facility, the findings shall be recorded on the DFS-349, Public Swimming and Bathing Facilities Inspection, or DFS-350, Public Swimming and Bathing Facilities Beach Inspection Report, and a copy provided to the facility owner or operator. The inspection report shall:

(a) Set forth any violation observed;

(b) Establish a specific and reasonable period of time for the correction of the violation observed; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 17. Water Sampling and Testing. (1) A water sample may be collected from facilities if inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak, and shall be submitted to the Division of Laboratory Services in an approved container and by approved sampling procedures for analysis.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

(a) Total coliform;

(b) E. coli; and

(c) Pseudomonad organisms.

(3) Multiple samples shall be collected at beaches to assure adequate representation of the entire facility water area.

(4) If a sample is positive test for a contaminant, the test shall be repeated within one (1) to seven (7) days.

(5) For a facility other than a bathing beach, no more than two (2) consecutive samples shall be positive for:

(a) More than two (2) coliform organisms per 100 milliliter (mL);

(b) Pseudomonas organisms; or

(c) E. coli.

(6) Beaches shall comply with the requirements of Section 4 of this administrative regulation prior to opening for the season and during the operating season.

(7) Additional samples may be requested to ensure compliance with this administrative regulation.

Section 18. Bacteriological Quality of Facility Water. (1) For facilities other than beaches, no more than two (2) consecutive samples shall:

(a) Contain more than 200 bacteria per mL;

(b) Have a positive confirmatory test for coliform organisms in any of the five (5) ten (10) mL portions of a sample or more than two (2) coliform organisms per 100 mL when the membrane filter test is used;

(c) Have a positive confirmatory test for pseudomonas organisms; or

(d) Have a positive test for fecal coliform organisms.

(2) Beaches shall comply with the standards set forth in Section 4(3)(a) of this administrative regulation.

Section 19. Conditions requiring Closure of a Facility and Enforcement Provisions. (1) The cabinet shall immediately order the closure of a facility and prohibit any person from using the facility by written notice to the facility owner or operator if:

(a) There is an immediate danger to health or safety;

(b) **Violations of the Virginia Graham Baker Act;**

(c) The water does not conform to the bacteriological standards contained in this administrative regulation;

(d)[~~(c)~~] An environmental survey of the area shows evidence of sewage, or other pollutants or toxic materials being discharged to waters tributary to a beach;

(e)[~~(d)~~] Turbidity levels of facility water do not meet the requirements of Section 9(4) of this administrative regulation;

(f)[~~(e)~~] The disinfectant residual is outside the range prescribed in this administrative regulation;

(g)[~~(f)~~] The pH is outside the range prescribed by this administrative regulation;

(h)[~~(g)~~] The cyanuric acid level exceeds fifty (50) ppm;

(i)[~~(h)~~] There is no pool operator available;

(j)[~~(i)~~] There has been a fecal accident in the pool;

(k)[~~(j)~~] In any instance where the owner, operator, an employee, or representative of the owner interferes with duly authorized agents of the cabinet, bearing proper identification, in the performance of their duties;

(l)[~~(k)~~] If recirculation systems, filtration systems, or disinfectant systems are not in operation, with exceptions for maintenance, and seasonal shut down; or

(m)[~~(l)~~] If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the facility and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order may request an administrative conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

(5) If a source of sewage, pollution, or toxic material discovered as a result of an environmental survey is eliminated, the cabinet may authorize the reopening of a beach.

(6) In all other instances of a violation of the provisions of this administrative regulation, or 902 KAR 10:121 for the nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation in question and afford a reasonable opportunity to correct same. An owner or operator who fails to comply with any written notice issued under the provisions of this administrative regulation or 902 KAR 10:121 shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of such notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet, by the owner or operator, within the ten (10) day period.

(7) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(8) Any person whose facility has been closed may, at any time, make application for a reinspection for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

(9)(a) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400.

(b) Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator, within the ten (10) day period.

Section 20. Existing Facilities and Equipment. (1) Notwithstanding the other provisions of this administrative regulation, existing facilities and equipment being used prior to August 1, 1996, that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if in good repair, capable of being maintained in a sanitary condition, meet facility water quality standards, and create no health or safety hazard.

(2) If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.

Section 21. Effect on Local Administrative Regulations. Compliance with this administrative regulation does not relieve any person from compliance with any other state or local laws dealing with pool operation and maintenance matters or zoning requirements that may also be applicable.

Section 22. Variances for Construction Requirements. (1) All facilities shall be constructed or remodeled in compliance with the provisions of these administrative regulations, except that an applicant may request a variance in those cases where it is determined that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.

Section 23. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) “DFS-349, Public Swimming and Bathing Facilities Inspection” 5/2021;

(b) “DFS-350 Public Swimming and Bathing Facilities Beach Inspection Report” 5/2021; and

(c) “DFS-352 Swimming Pool Log Sheet” 5/2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx.[

~~(1) "Accessible" means, if applied to a fixture, connection, appliance or equipment, having access to it, but may require the removal of an access panel, door or similar obstruction. "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.~~

~~(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.~~

~~(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor or other device, and the flood level rim of the receptacle.~~

~~(4)"Air induction system" means a system whereby a volume of air (only) is induced into hollow ducting built into a spa floor, bench, or other location. The air induction system is activated by a separate air power unit (blower).~~

~~(5) "Alkalinity or total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (p.p.m.).~~

~~(6) "Approved" means accepted or acceptable under the applicable specifications stated or cited in the administrative regulation or accepted as suitable for the proposed use by the State Building Code~~

~~(7) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.~~

~~(8) "Backwash cycle" means the time required to backwash the filter system thoroughly.~~

~~(9) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed un U.S. gallons per minute per square foot (liters per minute per square meter) of effective filter area.~~

~~(10) "Bather" means any person using a public swimming and bathing facility, and adjoining deck or beach area for the purpose of therapy, relaxation, recreation, competitive water sports or events, or related activities.~~

~~(11) "Bather load" means the maximum number of persons which may use the swimming and bathing facility as defined in the State Building Code.~~

~~(12) "Body feed" means the continuous addition of controlled amounts of filter aid during the operation of a diatomite type filter to maintain a permeable filter cake. If added as a slurry, this may be referred to as a slurry feed.~~

~~(13) "Cabinet" means the Cabinet for Health Services and its authorized agents.~~

~~(14) "Cartridge" means a replaceable porous filter element which can be the depth type or the surface type:~~

~~(a) "Depth type cartridge" means a filter cartridge with media not less than three-fourths (3/4) inch (.18 cm) thick which relies on penetration of particulates into the media to achieve their removal and to provide adequate holding capacity for the cartridge; and~~

~~(b) "Surface type cartridge" means a filter cartridge with media less than three-fourths (3/4) inch (.18 cm) thick which relies on retention of particulates on the surface of the cartridge to achieve their removal.~~

~~(15) "Chemical feeder output rate" means the weight or volume of active ingredients delivered by a chemical feeder expressed in units of time.~~

~~(16) "Chemical feed rate indicator" means a mechanism which will produce reproducible results expressed in units of weight or volume of chemical per unit of time, or per unit of volume of water; the mechanism may be a direct reading instrument, or may require the use of a reference chart.~~

~~(17) Circulation piping system" means the piping between the facility structure and the mechanical equipment.~~

~~(18) "Corrosion resistant" means capable of maintaining original surface characteristics under the prolonged influence of the environment in which it is used.~~

~~(19) "Design head" means the total head requirement of the circulation system at the design rate of flow.~~

~~(20) "Design rate of flow (design filter rate)" means the rate of flow in a system which is used for design calculation. (The volume of the facility in gallons divided by the number of minutes in the turnover time.)~~

~~(21) "Diving pool" means a pool designed and intended for use exclusively by divers.~~

~~(22) "Effective filter area" means:~~

~~(a) "Permanent media type" - the effective filter area is the cross-section area of the filter surface that is perpendicular to the flow direction;~~

~~(b) "Diatomaceous earth type" - the effective filter area of the septum is that part of the septum which will accept the full thickness of precoat and through which the design filter flow will be maintained during filtration; and~~

~~(c) "Cartridge filter" - the total effective filter area is that cartridge area which is exposed to the direct flow of water. This excludes cartridge ends, seals, supports, and other areas where flow is impaired.~~

~~(23) "Factor of safety" means the ultimate load divided by the safe load or the ultimate strength divided by the allowable stress.~~

~~(24) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance (a filter media or element):~~

~~(a) "Permanent media filter" means a filter that utilizes a media that can be backwashed and reused;~~

~~(b) "Diatomaceous earth filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that must be periodically replaced; and~~

~~(c) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.~~

~~(25) "Filter aid" refers to any means used to enhance the efficiency of the filter media. Alum, as used on the bed of a sand filter, is also referred to as a filter aid.~~

~~(26) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.~~

~~(27) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit. Filter elements usually consist of a septum and septum support:~~

~~(a) "Permanent filter media" means finely graded material (such as sand, anthracite, etc.) which removes suspended filterable particles from the water.~~

~~(b) "Nonpermanent filter media" means any type of finely graded media used to coat a septum type filter usually diatomaceous earth, processed perlite or similar material for the purpose of removing fine particulates from the water.~~

~~(28) "Filter waste discharge piping" means piping that conducts wastewater from a filter to a drainage system. Connection to drainage system is made through an air gap or other approved method.~~

~~(29) "Filtration rate" means the rate of water flow through a filter while in operation, expressed in U.S. gallons per minute per square foot (liters per minute per square meter) of effective filter area.~~

~~(30) "Flow balance valve" means a device to regulate the effluent from the skimmer housing of each of a combination of two (2) or more surface skimmers.~~

~~(31) "Flume" means an inclined channel which conveys the water and the bather from the top of the slide to the plunge pool of a water slide.~~

~~(32) "Friction loss" means the pressure drop expressed in feet (meters) of water or psi (pascals) caused by liquid flowing through the piping and fittings.~~

~~(33) "Handicap pool" means a swimming pool which is designed specifically for the use of persons who are physically or mentally disabled or impaired, and is equipped with devices, appliances, ramps and other means of assisted access to the pool.~~

~~(34) "Head loss" means the total pressure drop in psi (kilopascals) or feet (meters) or head between the inlet and the outlet of a component.~~

~~(35) "Hydrojet booster pump system" means a system whereby one (1) or more hydrojets are activated by the use of a pump which is completely independent of the filtration and heating system of a spa.~~

~~(36) "Hydrojets" means a fitting which blends air and water creating a high velocity, turbulent stream of air enriched water.~~

~~(37) "Indirect waste pipe" means a pipe that does not connect directly with the drainage system, but conveys liquid wastes by discharging into a plumbing fixture, interceptor, or receptacle which is directly connected to the drainage system.~~

~~(38) "Inlet fitting" means a fitting or fixture through which filtered water enters a pool or spa.~~

~~(39) "Listed" means equipment or materials included in a list~~

~~published by a listing agency that maintains periodic inspection on current production of listed equipment or materials, and whose listing states either that the equipment or material complies with approved standards or has been tested and found suitable for use in a specified manner.~~

~~(40) "Main outlet" means the outlet fitting(s) at the bottom of a facility through which passes water to a recirculating pump. It is often referred to as a "main drain."~~

~~(41) "Multiport valve" means a valve for various recirculation related operations, which combines in one (1) unit the function of two (2) or more single direct flow valves.~~

~~(42) "National Sanitation Foundation (NSF)" is based at 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106. It publishes a list of manufacturers and their equipment which has been approved as having satisfied NSF standards.~~

~~(43) "Perimeter overflow systems" means a channel at normal water level which normally extends completely around the pool perimeter. Also, known as an overflow or scum gutter.~~

~~(44) "Person" means any individual, firm, association, club, organization, partnership, business trust, corporation, company, or any state or local governmental agency.~~

~~(45) "Precoat" means the process of depositing a layer of diatomaceous earth on filter septa at the start of a filter cycle.~~

~~(46) "Public swimming and bathing facility" means an natural or artificial body or basin of water which is modified, improved, constructed, or installed for the purpose of swimming or bathing under the control of any person and includes, but is not limited to, the following:~~

~~(a) Beaches;~~

~~(b) Swimming pools, wading pools, wave pools;~~

~~(c) Competition swimming pools and diving pools;~~

~~(d) Water slides and spray pools; and~~

~~(e) Spas, therapeutic pools, hydrotherapy pools, and whirlpools. It includes those operated by communities, subdivisions, apartment complexes, condominiums, clubs, camps, schools, institutions, parks, mobile home parks, hotels, recreational areas, or similar public facilities. It does not include any of the above facilities which are at private single family residences intended only for the use of the owner and guests.~~

~~(47) "Public swimming and bathing facilities operator" means any "person" as defined above or any employees of that person who are delegated responsibility for the proper operation and maintenance of the facility.~~

~~(48) "Pump discharge pressure" means the actual gauge reading measured in psi taken at the discharge outlet of a pump.~~

~~(49) "Receptor" means an approved plumbing fixture or device of material, shape, and capacity to adequately receive the discharge from indirect waste piping, constructed and located to be readily cleaned.~~

~~(50) "Recirculation system" means the interconnected system traversed by the recirculated water from the pool until it is returned to the pool.~~

~~(51) Residual chlorine" shall mean the amount of measurable chlorine remaining in water following chlorination and is composed of the following components:~~

~~(a) Free available residual chlorine shall mean the amount of chlorine which is available to inactivate microorganisms and which has not reacted with ammonia, nitrogenous material, and other material in swimming pool water;~~

~~(b) Combined residual chlorine (also called "chloramine") shall mean the amount of chlorine which has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds;~~

~~(c) Total residual chlorine shall mean the arithmetic sum of free available residual chlorine and combined residual chlorine; and~~

~~(d) The word "disinfectant" may be substituted for "chlorine" in the above.~~

~~(52) "Return piping" means that part of the piping between the filter and the facility through which passes the filtered water.~~

~~(53) "Separation tank" means a device used to clarify filter rinse or wastewater.~~

~~(54) "Septum" means that part of the filter element consisting of cloth, or closely woven fabric or other porous material on which the filter cake is deposited.~~

~~(61) "Surface skimmer" means a device designed to continuously remove surface film and water (and return it through the filter) as part of the recirculation system, usually incorporating a self-adjusting floating weir, strainer basket, a collection tank, and a means to prevent air lock of the pump. It is sometimes referred to as a "recirculating overflow," a "mechanical" or an "automatic skimmer."~~

~~(55) "Spa" means a special facility designed for recreational and therapeutic use, and which is not drained, cleaned, or refilled after each individual use. It may include, but not be limited to, units designed for hydrojet circulation, hot water, cold water, mineral bath, air induction bubbles, or any combination thereof. Common terminology for a spa includes, but is not limited to, "therapeutic pool," "hydrotherapy pool," "whirlpool," "hot spa."~~

~~(56) "Static suction lift" means the vertical distance in feet (meters) from the center line of the pump impeller to the level of water in the pool.~~

~~(57) "Spray pool" means an artificially constructed area over which water is sprayed but is not allowed to pool. Sprayed water flows to waste and is not recirculated.~~

~~(58) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.~~

~~(59) "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of the pump and usually includes the following: main outlet piping, skimmer or gutter piping, vacuum piping, and surge tank piping.~~

~~(60) "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available residual which is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.~~

~~(62) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.~~

~~(63) "Total discharge head" means the value in feet (meters) of water that a pump will raise water above its center line.~~

~~(64) "Total suction head" means the value in feet (meters) of water that a pump will lift by suction.~~

~~(65) "Total dynamic suction lift (TDSL)" means the arithmetical total of static suction lift, friction head loss, and velocity head loss working on the suction side of the pump.~~

~~(66) "Trimmer valve" means a flow adjusting device which is used to proportion flow among multiple skimmers on a single line.~~

~~(67) "Turnover time" means the time in hours or minutes, required for the circulation system to filter and recirculate a volume of water equal to the facility volume.~~

~~(68) "Vacuum piping" means the piping from the suction side of a pump connected to a vacuum fitting located at the facility and below the water level to which underwater cleaning equipment may be attached.~~

~~(69) "Velocity" means a measurement of the motion of liquids expressed in feet per second.~~

~~(70) "Wading pool" means a pool intended only for small children. The maximum depth is less than twenty-four (24) inches.~~

~~(71) "Water slide" means a slide which consists of one (1) or more flumes, a plunge pool, a pump reservoir, and water treatment facilities, where water is pumped to the top of the slide and allowed to flow down the flume to the plunge pool.~~

~~(72) "Wave pool" means a swimming pool designed for the purpose of producing wave action in the water.~~

~~(73) "Working pressure" means the normal operating pressure recommended by the manufacturer.~~

~~Section 3. Submission of Plans and Specifications for Approval. (1) No person shall begin construction, or construct, or substantially change alter or reconstruct any public swimming and bathing facility until plans and specifications, with supporting design data as required in this administrative regulation for the proposed review of the plans, have first been submitted in quintuplicate (five (5) sets) to the cabinet through the Department of Housing, Buildings and Construction and have been approved in writing by all state or local~~

~~agencies having jurisdiction. All construction shall be in accordance with approved plans. The front page of the plans shall contain the name of the swimming and bathing facility, location by city and county, name of its owner and name of the engineer, architect, or person preparing the plans. Plans submitted by an engineer or architect shall bear his seal. Plans and specifications on public swimming and bathing facilities constructed by the state or political subdivision, or on facilities designed for a bather load of 100 or more, shall be prepared by an engineer or architect registered in the State of Kentucky and comply with the provisions of KRS 322.010 and 323.010. Plans and specifications, reports and other information shall be submitted in form and content as may be specified by the cabinet.~~

~~(2) The plans shall be drawn to scale and accompanied by proper specifications to permit a comprehensive engineering review of the plans including the piping and hydraulic details and shall include:~~

~~(a) A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;~~

~~(b) A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;~~

~~(c) The specifications shall contain details on all treatment equipment, including performance ranges of pumps, chlorinators, chemical feeders, filters, strainers, lights, skimmers, inlet and outlet fittings, diving boards, safety equipment and other related equipment;~~

~~(d) A statement of the design, bather load expected to use the facility at any given time; and~~

~~(e) Drawing of equipment room showing placement of equipment.~~

~~(3) Owners shall keep one (1) set of approved plans available for inspection at the job site in the possession of the actual builder of the facility.~~

~~(4) Upon completion of the recirculation piping system and prior to such piping being covered with dirt or concrete, the owner or builder shall contact affected agencies for inspection.~~

~~(5) Upon completion of the swimming and bathing facility, a notarized statement certifying completion of the facility in accordance with the approved plans and specifications and this administrative regulation shall be submitted to the cabinet by the engineer, architect, or person who prepared plans, and shall be accompanied by a request for inspection prior to occupancy. The facility shall not be used until final inspection by affected agencies demonstrates compliance with this administrative regulation.~~

~~(6) Unless construction is begun within one (1) year from date of approval, the approval shall expire. Extension of approval may be granted upon written request to the cabinet.~~

~~(7) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet and all other agencies having jurisdiction.~~

~~Section 4. Water Supplies. (1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Natural Resources and Environmental Protection Cabinet shall be provided.~~

~~(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility, and be capable of providing enough water to raise the water level in swimming, diving, or wave pools, and water slide plunge pools at least one (1) inch in three (3) hours.~~

~~Section 5. Water Quality and Sanitary Requirements for Bathing Beaches. (1) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the bathing beach area and the watershed.~~

~~(2) Physical quality. The following characteristics shall not be present in the beach area or watershed:~~

~~(a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; and~~

~~(b) Hazardous substances being discharged into bathing beach water or watershed.~~

~~(3) Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:~~

~~(a) It shall meet the requirements of 401 KAR 5:031, Section 6, recreational waters, as adopted by the Natural Resources and Environmental Protection Cabinet. Bacterial levels exceeding those standards shall be considered sufficient grounds to require additional investigation, survey, special analyses, and correction of any problems determined to be causing the high counts. Subsequent evaluation and satisfactory bacteriological results shall be obtained before approval for construction will be issued; and~~

~~(b) There shall be no sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.~~

~~(4) Chemical quality. There shall be no discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.~~

~~Section 6. Sewage and Wastewater Disposal. Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer. If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085, on-site sewage disposal systems administrative regulation.~~

~~(1) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. Such drainage shall not result in nuisance conditions, which create an offensive odor, or which produce a stagnant wet area, or which produce an environment for the breeding of insects;~~

~~(2) Wash or backwash water from sand filters or diatomaceous earth filters shall be discharged to public sanitary sewers, or if unavailable to a system approved by the cabinet.~~

~~Section 7. Refuse Disposal. (1) All refuse at a public swimming and bathing facility shall be disposed of in a manner approved by Natural Resources and Environmental Protection Cabinet.~~

~~(2) Refuse containers of approved design and construction, with tight fitting lids, adequate in number, shall be provided at readily accessible locations at all public swimming and bathing facilities. These containers shall be mounted upon an approved rack or holder in all outdoor locations, and shall be maintained to prevent the creation of a health or safety hazard.~~

~~(3) Refuse containers in rest rooms or bather preparation and dressing areas may be of open-top or swing-lid design, except in women's rest rooms where swing-lid or other covered top containers shall be required.~~

~~(4) Bulk refuse storage areas shall be designed, constructed, drained, and maintained to prevent rodent and vermin harborage, breeding sites, or insanitary conditions. Bulk refuse containers shall be of approved design and construction, with tight fitting lids, adequate in number, and shall be placed upon an impervious surface within a suitable enclosure to prevent access by animals.~~

~~(5) If the facility is not in use after seasonal operation or for any other reason, the facility shall not be allowed to accumulate debris, give off objectional odors, become a breeding site for insects, or create any other nuisance situation.~~

~~Section 8. Facility Design and Construction. (1) All public swimming and bathing facilities and attendant structures such as bathhouses, dressing rooms, or rest rooms, except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of the Kentucky State Building Code and the State Plumbing Code of the Department of Housing, Buildings, and Construction, Public Protection and Regulation Cabinet.~~

~~(2) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet. Within such limits of safe swimming there shall be no boating, underwater obstructions, or other hazards which may be dangerous or cause injury to swimmers. Signs shall be provided on~~

~~the beach describing these markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.~~

~~(3) If diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.~~

~~(4) Depth markings and lane lines.~~

~~(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility if possible and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:~~

~~1. At the points of maximum and minimum depths;~~

~~2. At the point of change of slope between deep and shallow portions (transition point);~~

~~3. At intermediate two (2) feet increments of water depth; and~~

~~4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.~~

~~(b) Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet or seven and five-tenths (7.5) m as measured peripherally.~~

~~(c) Depth markers shall be in Arabic numerals at least four (4) inches (ten (10) cm) high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be visible plainly to persons in the facility.~~

~~(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.~~

~~(e) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet). The line shall be placed one (1) foot toward the shallow end from where the break occurs.~~

~~Section 9. Facility Water Treatment Systems. (1) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities except bathing beaches. All system components shall bear the seal of approval of the National Sanitation Foundation (NSF). (Pumps greater than seven and five-tenths (7.5) HP which are not required to meet NSF testing standards shall be considered on a case-by-case basis.)~~

~~(2) Pumping equipment.~~

~~(a) The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control shall be provided in the recirculation pump discharge piping.~~

~~Turnover Rate. The turnover rate shall be as shown in the following table:~~	
~~Type of Facility~~	~~Turnover Required~~
~~Diving Pools~~	~~8 hours or less~~
~~Wading Pools, Spas~~	~~30 minutes or less~~
~~Water Slides, Handicap Pools~~	~~2 hours or less~~
~~Vortex Pools~~	~~1 hour or less~~
~~All Other Pools~~	~~6 hours or less~~
~~Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.~~	

~~(b) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems. The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:~~

~~1. Fifty (50) feet for all vacuum filters;~~

~~2. Seventy (70) feet for pressure sand or cartridge filters; or~~

~~3. Eighty (80) feet for pressure diatomaceous earth filters.~~

~~(c) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.~~

~~(d) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.~~

~~(e) A compound vacuum-pressure gauge shall be installed on the pump line. A vacuum gauge may be used for pumps with suction lift. A pressure gauge shall be installed on the pump discharge line adjacent to the pump.~~

~~(f) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.~~

~~(g) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are located downstream of the filter.~~

~~(3) Water heaters shall be installed at all indoor swimming and bathing facilities. If a water heater is installed, the following shall apply:~~

~~(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic in accordance with heater manufacturer's recommendations;~~

~~(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;~~

~~(c) Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;~~

~~(d) An automatic temperature limiting device with thermostatic control, which will prevent the introduction of water in excess of 100° Fahrenheit to swimming and diving pools and in excess of 104° Fahrenheit for spas shall be provided, and be accessible only to the facility operator;~~

~~(e) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;~~

~~(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the applicable State Building Codes;~~

~~(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;~~

~~(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer's recommendations or the State Building Code;~~

~~(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 BTU's/hour input per square foot of pool water surface area; and~~

~~(j) All heaters shall meet the latest standards of applicable recognized testing agencies.~~

~~(4) A flow meter shall be located so that the rate of recirculation may be easily read. Flow meters shall be installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence.~~

~~(5) Vacuum cleaning system.~~

~~(a) A vacuum cleaning system shall be provided for all facilities except beaches, and small indoor spas designed for six (6) or less bathers. A vacuum cleaning system capable of reaching all parts of the facility bottom shall be provided;~~

~~(b) A vacuum system may be provided which utilizes the attachment of a vacuum hose to the suction piping through the skimmer. Vacuumed water must pass through the skimmer's strainer basket;~~

~~(c) If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting(s) shall be provided eight (8) to twelve (12) inches below the normal water level and be provided with a cap or plug. Piping from this connection shall be to the suction side of the pump ahead of the hair and lint strainer, shall be at least one and one-half (1 1/2) inches in diameter and be equipped with a control valve near the junction with the pump suction line. The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning;~~

~~(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom; and~~

~~(e) Vacuum systems are to be used only when the facility is closed to bathers.~~

~~(6) Piping, skimmer and overflow system.~~

~~(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water. All piping, valves, or fittings shall be color coded, or suitably labeled, or marked to denote its purpose within the facility water treatment system.~~

~~(b) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping, and ten (10) feet per second in pressure piping. Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.~~

~~(c) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:~~

~~1. Main outlet bypass or other connections to waste;~~

~~2. Surge tank drain and overflow lines;~~

~~3. Pump discharge to waste lines; and~~

~~4. Gutter bypass to waste lines.~~

~~(7) Inlets.~~

~~(a) Each inlet shall be flow adjustable.~~

~~(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except in facilities equipped with skimmers it shall be in the range of ten (10) to twenty (20) feet per second.~~

~~(c) Inlets shall be located and permanently directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots. Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat. Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.~~

~~(d) Inlets for swimming and diving pools, wave pools, large spas, and water slide plunge pools shall be spaced as follows:~~

~~1. Inlets shall be placed completely around the pool, each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool; and~~

~~2. If inlets are to be placed on the bottom of the pool, the number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15), any fraction thereof would represent one (1) additional inlet.~~

~~(e) Inlets for wading pools, and small spas for six (6) or less bathers, shall be at least two (2) in number, and placed so as to meet the requirements of paragraph (c) of this subsection.~~

~~(f) At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.~~

~~(g) A continuous flume, tubing, or other arrangement near the pool water surface which serves as inlet supply piping and employs multiple "jet" inlets is approved provided the individual components of the system meet the requirements of paragraphs (a), (b) and (c) of this subsection and subsections (9)(a), (b) and (10) of this section.~~

~~(h) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.~~

~~(8) Outlets.~~

~~(a) All facilities shall be provided with a main outlet at the deepest point to permit the facility to be completely and easily drained. Openings shall be covered by a proper grating which is not removable by bathers without the use of tools, and which cannot entrap their fingers. Openings of the grating shall be at least four (4) times the area of the main outlet pipe and have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2) feet per second at maximum flow. The maximum width of grate openings shall be one-fourth (1/4) inch;~~

~~(b) Multiple outlets shall be provided in all facilities where the width of the facility is more than thirty (30) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series. All spas and wading pools shall have at least two (2) outlets;~~

~~(c) A hydrostatic relief valve may be provided for in-ground swimming and diving pools, wave pools, and water slide plunge pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer; and~~

~~(d) Main outlet piping shall be sized for removal of the water through it at a rate of at least 100 percent of the design recirculation flow rate at velocities specified in subsection (6)(b) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.~~

~~(9) Perimeter overflow systems.~~

~~(a) Swimming and bathing facilities other than pools designed and used exclusively for diving, having a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system. Swimming and bathing facilities less than 1,600 square feet in area and thirty (30) feet or less in width may use surface skimmers.~~

~~(b) A perimeter overflow system shall:~~

~~1. Extend completely around the facility;~~

~~2. Permit inspection, cleaning, and repair;~~

~~3. Be designed so that no ponding or retention of water occurs within any portion of the system; or the passage of small children into an enclosed chamber;~~

~~4. Be designed to prevent the entrapment of bather's arms, legs, and feet;~~

~~5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;~~

~~6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;~~

~~7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate. If the surge volume is to be stored in the perimeter overflow system, the system shall have the capacity to carry 100 percent of the design flow while maintaining the surge storage capacity;~~

~~8. Discharge to the recirculation system;~~

~~9. Be provided with sufficient drains and piping which will not allow the overflow channel to become "flooded" when the facility is in normal use; and~~

~~10. Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.~~

~~(10) All facilities which have perimeter overflow systems shall be provided with a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, in the perimeter overflow system, in a surge tank, or a combination of these. Valving shall be provided where necessary, to automatically retain water during periods of facility use and to discharge water during the periods of nonuse so that the proper operating water level in the facility is maintained at all times.~~

~~(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:~~

~~(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof; with a minimum of two (2) skimmers provided, except for small spas, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.~~

~~(b) Skimmers shall be located to minimize interference with each other;~~

~~(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate;~~

~~(d) The surface skimmer piping shall have both a trimmer valve and a separate valve in the equipment room to permit adjustment of flow;~~

~~(e) Each skimmer shall be provided with an equalizer line at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve;~~

~~(f) A basket which can be removed without the use of tools and through which all overflow water must pass, shall be provided; and~~

~~(g) Skimmer equipped swimming and diving pools, wave pools, water slide plunge pools, and large spas shall have a smoothly contoured handhold coping not over two and one-half (2 1/2) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.~~

~~(12) All facilities shall be equipped for the addition of make-up~~

~~water from a potable water source pursuant to the following:~~

~~(a) Discharge through an air gap of at least six (6) inches to the facility to a surge tank, or a vacuum filter tank. If make-up water is added directly to the facility, the fill-spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and~~

~~(b) Through piping with vacuum breaker, antisiphon or other protection as specified by the State Plumbing Code.~~

~~(13) Filtration.~~

~~(a) Filters shall comply with the following:~~

~~1. Pressure filters shall have pressure gauges;~~

~~2. Pressure filters shall have an observable free fall, or a sight glass shall be installed on the backwash discharge line;~~

~~3. Pressure filters shall have a manual air-relief valve at the high point;~~

~~4. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;~~

~~5. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer;~~

~~6. Filter media shall meet NSF specifications;~~

~~7. Each facility shall have separate filtration and treatment systems;~~

~~8. Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day except if the facility is closed for repairs or at the end of the swimming season; and~~

~~9. Individual filters shall be designed with necessary valves and piping to permit isolation of individual filters for repairs while other units are in service.~~

~~(b) Rapid sand or gravity sand filters:~~

~~1. Rapid sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover. Open gravity type filters shall be designed for a filter rate not exceeding two (2) gallons per square foot per minute.~~

~~2. Filtering media shall consist of at least twenty (20) inches of graded, sharp filter sand with an effective size between four-tenths (0.4) and 0.55 mm and a uniformity coefficient not exceeding one and 1.75, supported by at least ten (10) inches of graded filter gravel. Anthracite with effective size of six-tenths (0.6) to eight-tenths (0.8) mm with a uniformity coefficient of not greater than one and eight-tenths (1.8) may be used in lieu of the sand. A reduction in gravel depth or an elimination of gravel may be permitted where equivalent performance and service are demonstrated.~~

~~3. At least twelve (12) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains which serve as overflows during backwashing.~~

~~4. The filter system shall be designed with necessary valves and piping to permit:~~

~~a. Filtering to pool; and~~

~~b. Individual backwashing of filters to waste at a rate of not less than fifteen (15) gallons per minute per square foot of filter area. A backwash rate of eight (8) gallons per square foot per minute shall be provided for anthracite filters;~~

~~5. Each filter shall be provided with an access opening of not less than a standard eleven (11) inch by fifteen (15) inch manhole and cover.~~

~~6. The filter tank and its integral parts shall be constructed of substantial material capable of withstanding continuous anticipated usage and shall be designed for a pressure safety factor of four (4) based on the maximum shutoff head of the pump. This shutoff head for design purposes shall in no case be considered less than fifty (50) pounds per square inch.~~

~~(c) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.~~

~~(d) Diatomaceous earth filters.~~

~~1. The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;~~

~~2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoating;~~

~~3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;~~

~~4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water; and~~

~~5. All filters shall be equipped for cleaning by one (1) or more of the following methods: backwashing; air-pump assist backwashing; spray wash; water pressure to wash vacuum filter; or agitation.~~

~~(e) Vacuum sand filters.~~

~~1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and~~

~~2. Overflow piping shall be provided in order to drain overflow water.~~

~~(f) Cartridge filters.~~

~~1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;~~

~~2. Cartridge filters shall only be used on indoor pools;~~

~~3. The design filtration rate shall not exceed 0.15 gallons per minute per square foot of filter surface area; and~~

~~4. A clean duplicate set of cartridges shall be maintained at the facility.~~

~~(14) Disinfectant and chemical feeders.~~

~~(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control, except as stated in paragraph (e) of this subsection.~~

~~(b) Equipment capacity.~~

~~1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of eight (8) p.p.m. (two and seven-tenths (2.7) lbs/day chlorine gas or its equivalent for each 10,000 gallons of pool volume) for outdoor facilities and three (3) p.p.m. (one (1) lbs/day for chlorine gas or its equivalent for each 10,000 gallons of pool volume) for indoor facilities based on the flow rates specified in subsection (2)(a) of this section;~~

~~2. The equipment for supplying chlorine shall not be controlled by a day-date clock;~~

~~3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter;~~

~~4. Pot feeders for supplying bromo-chlorodimethylhydantoin sticks shall contain at least 0.50 pounds of bromo-chlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment;~~

~~5. Ozone may be used as a supplement to chlorination or bromination as required in subparagraph 1 or 4 of this paragraph. Ozonation equipment will be considered by the cabinet on a case-by-case basis for experimental use; and~~

~~6. No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than .05 p.p.m. at all times either in the vicinity of the ozonator or at the pool water surface.~~

~~(c) If positive displacement pumps (hypochlorinators) are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.~~

~~(d) Gas chlorinators.~~

~~1. The chlorine supply and gas feeding equipment shall be~~

~~housed in a separate, relatively airtight room. The room shall be provided with an exhaust system which takes its suction not more than eight (8) inches from the floor and discharges out-of-doors in a direction to minimize exposure to toxic fumes. The fan shall be capable of producing one (1) air change per minute. Means for introducing a fresh air supply to the enclosure through appropriate openings such as filters, grill openings, or other similar openings, at a high point opposite the exhaust fan intake shall be provided. The room shall have a window at least eighteen (18) inches square, and shall have artificial lighting. Electrical switches for lighting and ventilation shall be outside and adjacent to the door. Scales for weighing chlorine cylinders in service shall be provided. Automatic changeover chlorinators may be substituted for scales.~~

~~2. Chlorine cylinders either full or empty shall be anchored, or chained in a vertical position. The valve protection hoods shall be kept in place, except when the cylinders are connected. Chlorine feed devices should be located directly on the tank if practical;~~

~~3. The chlorine feeding device shall be designed so that during interruptions of the flow of the water supply, gas feed is automatically terminated. In addition, the release of chlorine shall be terminated if the recirculation pump is shut off. If other than facility recirculated water is used, the supply line shall be equipped with an electric shut off valve wired to the recirculation pump and shall be equipped with an approved backflow preventer. If two (2) or more cylinders are in use, an automatic changeover valve shall be used;~~

~~4. Chlorinator vent lines shall be conducted to the out-of-doors similar to the chlorinator room exhaust system;~~

~~5. The gas chlorinator shall be the solution feed type capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere;~~

~~6. The water supply for the gas feeding equipment shall produce the flow rate and pressure required according to the manufacturer's specifications for proper operation of the equipment;~~

~~7. A self-contained breathing apparatus (SCBA) designed for use in a chlorine atmosphere and of a type approved by the Mine Safety and Health Administration (MSHA) or the National Institute for Occupational Safety and Health (NIOSH), shall be provided. This SCBA shall have sufficient capacity for the purpose intended. In addition a written respirator program shall be provided and employees shall be trained in the use and maintenance of such equipment to insure operability and safety. The SCBA shall be kept in a closed cabinet, accessible without a key, and located outside of the chlorine room. Installation of chlorinator equipment, and its operation, shall be carried on by and under the supervision of personnel experienced with installation and operation of such equipment. A chlorine valve shut off wrench shall be kept on the cylinder valve stem that is in use; and~~

~~8. In the event of a chlorine leak, the fire department or an agency trained in the handling of chlorine spills shall be immediately contacted. The phone numbers of the fire department or above agency shall be posted on the outside of the chlorine room door.~~

~~(e) pH control feeders. At facilities with a volume greater than 100,000 gallons, or at facilities utilizing gas chlorine as a disinfectant, a chemical feeder of positive displacement type shall be installed for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate at least forty (40) gallons capacity shall be provided.~~

~~(f) Erosion type chlorine feeders shall be prohibited.~~

~~(15) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of at least the following:~~

~~(a) A DPD (Diethyl-P-Phenylene Diamine) colorimetric test kit shall be provided, which will determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents are not acceptable;~~

~~(b) There shall be At least five (5) chlorine color standards and at least five (5) pH color standards. Chlorine standards shall range from one-tenth (0.1) to three (3.0) p.p.m. and pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4), as a minimum.~~ **Both tests shall be accurate to within two-tenths (0.2) units**~~; and~~

~~(c) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 p.p.m.~~

~~Section 10. Operational Water Quality Standards. (1) Disinfectant residuals for swimming and diving pools, wading pools, water slides, and wave pools:~~

~~(a) Chlorine residual shall be maintained between one (1.0) p.p.m. and two and five-tenths (2.5) p.p.m. as free available chlorine.~~

~~(b) Bromine residual shall be maintained between one (1.0) p.p.m. and two and five-tenths (2.5) p.p.m. as free available disinfectant.~~

~~(c) Pools stabilized with cyanuric acid shall meet the following criteria:~~

~~1. Be an outdoor facility;~~

~~2. Maintain one and five-tenths (1.5) to two and five-tenths (2.5) p.p.m. free available chlorine residual; and~~

~~3. Cyanuric acid concentration twenty-five (25) p.p.m. to fifty (50) p.p.m.~~

~~(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) p.p.m.~~

~~(2) Disinfectant residuals for spas:~~

~~(a) Chlorine residual shall be maintained between one (1.0) two (2.0) p.p.m. and three (3.0) p.p.m. as free available chlorine;~~

~~(b) Bromine residual shall be maintained between two (2.0) p.p.m. and three (3.0) p.p.m. as free available disinfectant; and~~

~~(c) If the level of chloramines exceeds two-tenths (0.2) p.p.m., superchlorination is required. During the superchlorination process and until such time as free chlorine levels return to three (3) p.p.m. or less, the facility shall be closed.~~

~~(3) pH. The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.~~

~~(4) Turbidity. Facility water shall have sufficient clarity at all times to meet one (1) of the following:~~

~~(a) A black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the pool;~~

~~(b) The openings of the main outlet grate are clearly visible by an observer on the deck; and~~

~~(c) For wading pools the bottom of the pool shall be clearly visible.~~

~~(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 p.p.m., as determined by suitable test kits.~~

~~(6) Temperature. The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76) degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes as competition, physical therapy, or instruction of children. Variances may be approved if proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated, and that the variance will not jeopardize public health. Air temperature at an indoor facility shall be higher than the water temperature, except for spas. In no instance will water temperatures for any facility including spas be permitted to exceed 104 degrees Fahrenheit. All facilities with heated water shall be provided with at least one (1) breakproof thermometer located within the facility water in a conspicuous location. The thermometer shall be securely mounted to prevent tampering by bathers.~~

~~(7) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:~~

~~(a) Disinfectant residual, and pH shall be checked at least three (3) times daily with a greater frequency if bather load or climatic conditions warrant.~~

~~(b) Turbidity - daily, or more often as needed.~~

~~(c) Alkalinity, cyanuric acid (if used) - weekly, or more often as needed.~~

~~(d) Temperature:~~

~~1. Spas - daily, or more often as needed; and~~

~~2. All other indoor facilities - daily.~~

~~(8) All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.~~

~~Section 11. General Facility Operation and Maintenance. (1) Facility and facility area.~~

~~(a) All facilities shall be maintained free from sediment, lint, dirt, and hair. Cracks and other defects in the facility shall be repaired. The walls, ceilings, floors, and equipment shall be painted as often as necessary so that they are protected from deterioration. The bottom and sides of the facility shall be maintained so that they are free from deterioration;~~

~~(b) Decks shall be rinsed as necessary to be kept clean. Indoor decks shall be disinfected at least weekly. The walk areas, overflow gutters, counters, lockers, equipment, furniture, interior partitions, and walls shall be kept in good repair, clean, and sanitary; and~~

~~(c) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.~~

~~(2) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other obstacles which would restrict flow. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the perimeter overflow or skimmer system.~~

~~(3) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.~~

~~(4) Bather preparation facilities.~~

~~(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily; and~~

~~(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair. Floors shall be maintained in a nonslip condition. Soap dispensers shall be filled and operable. Adequate supplies of toilet tissue, disposable hand drying towels, roll type cloth towels, or suitable hand drying devices shall be maintained.~~

~~(5) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.~~

~~(6) Safety. All public swimming facilities shall have adequate enclosures that meet the specifications of Department of Housing, Buildings and Construction. Doors or gates in the facility enclosure shall be kept closed and locked if the facility is closed.~~

~~(7) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.~~

~~(8) Diving equipment, ladders, hand rails, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.~~

~~(9) Operation of mechanical equipment.~~

~~(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility;~~

~~(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day; and~~

~~(c) Recirculation pumps. The pump shall not be throttled on the suction side (except the bottom drain line valve) during normal operation, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.~~

~~(10) Filtration.~~

~~(a) Sand filters.~~

~~1. The filter air release valve shall be opened as necessary, to remove air which collects in the filter, and following each backwash; and~~

~~2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.~~

~~(b) Diatomaceous earth filters.~~

~~1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;~~

~~2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and~~

~~3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) - one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.~~

~~(11) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.~~

~~(12) Flow meters. Flow meters shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.~~

~~(13) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.~~

~~(14) Gas chlorinators.~~

~~(a) Gas chlorinators shall be repaired only by a person trained in servicing these units. The facility operator shall determine the appropriate emergency personnel to contact in the event of a chlorine gas emergency and have the telephone number of said personnel conspicuously posted;~~

~~(b) Chlorine cylinders shall be stored indoors in the area designed for that purpose and away from a direct source of heat. Cylinders shall not be moved unless the protection cap is secured over the valve; and~~

~~(c) Chlorinator, gas line, injector, and cylinders shall be checked daily for leaks. Chlorine will produce a white smoke in the presence of ammonia. In case of a chlorine leak, corrective measures shall be undertaken only by trained persons wearing proper safety equipment. All other persons shall leave the dangerous area until conditions are again safe.~~

~~(15) Self-contained breathing apparatus (SCBA).~~

~~(a) A record shall be kept of SCBA usage to insure that the unit will be serviceable when needed. The SCBA shall be kept in a closed cabinet, accessible without a key, located outside of the room in which the chlorinator is located, and preferably outside the entrance to the equipment room; and~~

~~(b) The SCBA shall be serviced regularly as per manufacturer's recommendations.~~

~~(16) Positive displacement feeders.~~

~~(a) Positive displacement feeders shall be periodically inspected and serviced;~~

~~(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and~~

~~(c) Sludge accumulations shall be cleaned periodically from the unit.~~

~~(17) Chlorinated cyanurates. The use of chlorinated cyanurates is prohibited.~~

~~(18) pH adjustment.~~

~~(a) Soda ash or caustic soda may be used to raise the facility water pH;~~

~~(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the~~

handling and use of this chemical;

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH;

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical; and

(e) The cabinet shall be consulted in the event of unusual pH problems including corrosion or scaling or wide fluctuations in pH.

(19) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose, and removed by the suction cleaner and filtration system.

(20) Miscellaneous chemicals.

(a) Chemicals other than disinfectants shall be used only with the advice and under the supervision of the cabinet;

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat and in a clean, dry, and well-ventilated place which prevents unauthorized access to the chemicals;

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions; and

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) p.p.m.

(21) Equipment rooms.

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room which affords protection from the weather, prevents unauthorized access, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and

(e) The equipment room and all other storage areas mentioned above shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

(22) Maintenance of bathing beaches.

(a) Beach areas shall be maintained free of litter and waterborne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.

(b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas, and shall extend beneath the water of all wading and swimming areas; and

(c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis, and immediately after high water conditions for floating or sunken debris, and obstructions at diving areas and high water turbidity which may present safety hazards to bathers.

Section 12. Facility Records. (1) The operator of each facility shall keep a daily record of information regarding operation including disinfectant residuals, pH, maintenance procedures, and recirculation, together with other data as may be required on form DFS-352 - Swimming Pool Log Sheet furnished by the cabinet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records, which include the following shall be kept showing daily or weekly results as applicable:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level (if applicable); and

(c) Malfunctioning of equipment.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

Section 13. Personnel. (1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times when the facility is open for use.

(2) Lifeguards.

(a) A lifeguard or Lifeguards shall be provided at all facilities, regardless of square footage which allow bathers sixteen (16) years of age or under to enter the facility area without a responsible person seventeen (17) years of age or older present

(b) All facilities which do not provide a lifeguard must post and enforce the following rule: "No person may enter the facility area alone or swim alone."

(c) If lifeguards are required, lifeguards shall comply with the following:

1. Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross, YMCA, or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;

2. More than one (1) lifeguard shall be on duty at large facilities or facilities with a large number of bathers. Lifeguards shall be provided at a ratio of one (1) per 200 bathers or one (1) per 2,000 square feet of water surface area, whichever is less;

3. Lifeguards shall be dressed in swimming attire; and

4. Lifeguards assigned to the supervision of the facility shall not be subject to duties that would distract their attention from proper observation of persons in the facility area, or that would prevent immediate assistance to persons in distress in the water.

Section 14. Safety Equipment. (1) Facilities other than beaches having an area of more than 2,000 square feet of water surface area shall be provided with an elevated lifeguard chair. An additional lifeguard chair shall be provided for each additional 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.

(2) Beaches shall be provided with an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The chairs shall be located on the beach to provide a clear view of all areas under surveillance and to provide the quickest response time.

(3) The following lifesaving equipment shall be provided:

(a) A U.S. Coast Guard approved ring buoy not more than fifteen (15) inches in diameter to which shall be attached a three-sixteenths (3/16) inch rope of length one and one-half (1 1/2) times the maximum pool width;

(b) A life pole or shepherd's crook type of pole having blunted ends with a minimum length of twelve (12) feet; and

(c) One (1) plywood backboard with straps, made to the specifications of the American Red Cross for back and neck injuries.

(4) The equipment listed in subsection (3) of this section shall be considered as one (1) unit (except paragraph (c)) and shall be considered as adequate for 2,000 square feet of facility water surface area. An additional unit shall be provided for each additional 2,000 square feet or major fraction thereof.

(5) Facilities limited to small spas, of less than 144 square feet of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.

(6) Bathing beach facilities shall provide the following lifesaving equipment in addition to that listed in subsection (3) of this section:

(a) Paddle board or surfboard;

(b) At least one (1) lifeboat, containing one (1) unit of lifesaving equipment and outfitted to meet state water safety administrative regulations; and

(c) A torpedo shaped buoy.

(7) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent, which shall be kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.

(8) Lifesaving equipment shall be mounted in conspicuous

~~places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove such equipment from its established location. This equipment at beaches shall be located at each lifeguard chair, with the lifeboat mentioned in subsection (6)(b) of this section being located at the most centrally stationed lifeguard chair.~~

~~(9) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.~~

~~(10) All facilities shall have a nonpay telephone on the premises which is readily accessible and conspicuously located; for isolated facilities two (2) way radio communication systems to a manned telephone system may be substituted. The telephone number of a police, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.~~

~~(11) All drownings and injuries requiring hospitalization shall be immediately reported to the cabinet.~~

~~Section 15. Spectator and Bather Administrative Regulations. (1) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and shall be enforced by the facility operator. Posting of rules and other instructions shall provide that:~~

~~(a) Admission to the facility is refused to all persons having any contagious disease, infectious conditions as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition which has the appearance of being infectious. Persons with excessive sunburn, abrasions which have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind are not permitted. A person under the influence of alcohol or exhibiting erratic behavior shall not be permitted in the facility area;~~

~~(b) No food, drink, gum, tobacco will be allowed in other than specially designated and controlled sections of the facility area;~~

~~(c) Personal conduct within the facility shall assure that the safety of self and others is not jeopardized. No running and no boisterous or rough play (except supervised water sports) are permitted;~~

~~(d) People in street shoes and other spectators are not allowed in the facility, on the deck, and in the "wet" areas of the bathhouse, except those engaged in official duties;~~

~~(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water is not permitted;~~

~~(f) Glass, soap, or other material which might create hazardous conditions or interfere with efficient operation of the facility shall not be permitted in the facility or on the deck;~~

~~(g) All apparel worn in the facility shall be clean;~~

~~(h) Diving in shallow water is not permitted;~~

~~(i) Caution shall be exercised in the use of diving boards; and~~

~~(j) Animals shall be excluded from the facility area.~~

~~(2) Due to the nature of bathing beaches, subsection (1)(c), (d), and (g) of this section shall not apply. Subsection (1)(a) and (b) of this section shall be enforced at the discretion of the facility operator, except for parts dealing with those persons with excessive sunburn or those under the influence of alcohol or exhibiting erratic behavior, which shall be enforced at all facilities.~~

~~(3) In addition to the requirements of subsection (1) of this section, a caution sign shall be mounted adjacent to all spas which contain the following warnings:~~

~~CAUTION~~

~~Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high/low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.~~

~~Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.~~

~~Do not use at water temperatures greater than 104 degrees Fahrenheit.~~

~~Do not use alone.~~

~~Unsupervised use by children is prohibited.~~

~~Enter and exit slowly.~~

~~Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.~~

~~Long exposure may result in nausea, dizziness, fainting, or death.~~

~~Keep all breakable objects out of the area.~~

~~Shower before entering the spa.~~

~~(4) A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.~~

~~Section 16. Swimming Suits and Towels Furnished by Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.~~

~~Section 17. Facility Inspection. (1) Seasonal facilities.~~

~~(a) All owners or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this administrative regulation except in instances where the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet, at its discretion, may require one (1) of the full facility inspections to be performed prior to a facility's opening; and~~

~~(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.~~

~~(2) Continuous operation (indoor) facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.~~

~~(3) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.~~

~~(4) Facilities other than beaches shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of the following:~~

~~(a) Disinfectant residual testing (free available residual) and combined disinfectant in p.p.m.;~~

~~(b) pH testing;~~

~~(c) Total alkalinity testing;~~

~~(d) Cyanuric acid testing (if cyanuric acid stabilizers are used);~~

~~(e) Turbidity assessment;~~

~~(f) Temperature testing (if heated water facility);~~

~~(g) Review of operator's daily log;~~

~~(h) Visual scanning for algae or debris; and~~

~~(i) Other checks as necessary.~~

~~(5) Beaches shall receive monitoring inspections once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation and safety checks as necessary.~~

~~(6) The cabinet may make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.~~

~~(7) If an agent of the cabinet makes an inspection of a public swimming and bathing facility, he shall record his findings on an official cabinet inspection report form DFS-349 - Public Swimming and Bathing Facilities Inspection or DFS-350 - Public Swimming and Bathing Facilities Beach Inspection Report and provide the facility owner or the operator with a copy. The inspection report shall:~~

~~(a) Set forth any violation(s) if found;~~

~~(b) Establish a specific and reasonable period of time for the correction of the violation(s) found; and~~

~~(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.~~

~~Section 18. Water Sampling and Testing. (1) A water sample may be collected from facilities if inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak, and shall be submitted to the Health Services Laboratory or other laboratory licensed by the~~

~~Natural Resources and Environmental Protection Cabinet for analysis. Samples shall be collected in approved containers and by approved sampling procedures.~~

~~(2) Samples shall be collected and analyzed for any of the following or other contaminants:~~

~~(a) Total coliform;~~

~~(b) Fecal coliform; and~~

~~(c) Pseudomonad organisms.~~

~~(3) Multiple samples may be collected at bathing beaches to assure adequate representation of the entire facility water area.~~

~~(4) Need for additional samples at other times shall be triggered by the results of monitoring inspections, reported disease outbreaks associated with the facility, or failure of previous samples to meet the standards outlined in Sections 5 and 19 of this administrative regulation. If a sample shows a positive test for contaminants as specified in subsection (2)(a), (b), and (c) of this section, the sample shall be repeated within one (1) to seven (7) days.~~

~~Section 19. Bacteriological Quality of Facility Water. (1) For facilities other than bathing beaches, no more than two (2) consecutive samples shall contain either:~~

~~(a) More than 200 bacteria per milliliter, as determined by the standard (thirty-five (35) degrees Centigrade) agar plate count;~~

~~(b) Show a positive test (confirmed test) for coliform organisms in any of the five (5) ten (10) milliliter portions of a sample or more than two (2.0) coliform organism per 100 ml when the membrane filter test is used;~~

~~(c) Show a positive test (confirmed test) for pseudomonas organisms; or~~

~~(d) Show a positive test for fecal coliform organisms.~~

~~(2) Bathing beaches shall comply with the standards set forth in Section 5(3)(a) of this administrative regulation.~~

~~Section 20. Conditions requiring Closure of a Facility and Enforcement Provisions. (1) If the cabinet finds any of the following conditions, it may immediately order by written notice the owner or operator to close the facility and to prohibit any person from using the facility:~~

~~(a) If conditions at a facility and appurtenances, including bathhouse facilities, upon inspection and investigation by a representative of the cabinet, create an immediate danger to health or safety;~~

~~(b) If the cabinet upon review of results of bacteriological analyses of water samples collected from a facility, finds that the water does not conform to the bacteriological standards promulgated by the cabinet for proper swimming and bathing water quality;~~

~~(c) If an environmental survey of an area shows evidence of sewage or other pollutional or toxic materials being discharged to waters tributary to a beach creating an immediate danger to health or safety;~~

~~(d) If Turbidity levels of facility water do not meet the requirements of Section 10(4) of this administrative regulation;~~

~~(e) If in such cases as it is required, the presence of a satisfactory disinfectant residual, prescribed by the cabinet is absent;~~

~~(f) In any instance where the owner, operator, or any other employee or representative of the owner interferes with duly authorized agents of the cabinet, bearing proper identification, in the performance of their duties;~~

~~(g) If recirculation system(s), filtration system(s), or disinfectant system(s) are not in operation (with exceptions for maintenance, and seasonal shut down); or~~

~~(h) If serious or repeated violations of any of the requirements of the administrative regulations are found.~~

~~(2) The notice shall state the reasons prompting the closing of the facility and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.~~

~~(3) Any owner or operator affected by an order is entitled, upon written request on form DFS-212 - Request for Hearing to the cabinet, to a hearing in accordance with 902 KAR 1:400.~~

~~(4) If the conditions are abated or if the results of analyses of water samples collected from the facility, in the opinion of the cabinet, comply with the cabinet's bacteriological standards for acceptable water quality, or if the turbidity decreases to the permissible limit, or if the disinfectant residual reaches a satisfactory level as prescribed by administrative regulation, the cabinet may authorize reopening the facility. If sources of sewage, pollution, or toxic materials discovered as a result of an environmental survey are eliminated the cabinet may authorize reopening of such beach.~~

~~(5) In all other instances of violation of the provisions of this administrative regulation, including nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation(s) in question and afford a reasonable opportunity to correct same. If an owner or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the owner or operator shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the owner or operator, within such ten (10) day period.~~

~~(6) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.~~

~~(7) Any person whose facility has been closed may, at any time make application for a reinspection on form DFS-215 - Application for Reinstatement of Suspended Permits for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.~~

~~(8) For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a hearing has been provided in accordance with 902 KAR 1:400. Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a hearing is filed with the cabinet by the owner or operator, within such ten (10) day period.~~

~~Section 21. Existing Facilities and Equipment. (1) Notwithstanding the other provisions of this administrative regulation, existing facilities and equipment being used prior to the effective date of this administrative regulation, which do not fully meet the design, construction, and materials requirements of this administrative regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, meet facility water quality standards, and create no health or safety hazard.~~

~~(2) If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.~~

~~Section 22. Effect on Local Administrative Regulations. Compliance with this administrative regulation does not relieve any person from compliance with any other state or local laws, dealing with pool operation and maintenance matters, or zoning requirements which may also be applicable.~~

~~Section 23. Variances. (1) All facilities shall be constructed or remodeled in compliance with the provisions of these administrative regulations, except that an applicant may request and the cabinet may grant a variance in those cases where it is determined that the variance would not affect seriously the safe and healthful operation of the facility.~~

~~(2) Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.~~]

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 8:00 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes uniform standards for public swimming pools and bathing facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all public swimming and bathing facilities operate in a safe and sanitary manner to reduce the incidence of recreational water related illnesses and outbreaks, and reduce pool chemical-associated health events.

According to the Centers for Disease Control and Prevention (CDC):

"Water-based physical activity, such as swimming, improves physical and mental health throughout life; however, it can put people at risk for recreational water–associated illness and injury. A recreational water illness outbreak is the occurrence of similar illnesses in 2 or more persons, epidemiologically linked by location and time of exposure to recreational water. For 1978–2012, 879 recreational water illness outbreaks have been reported CDC, and the number reported annually has increased significantly in recent years, especially the number of outbreaks associated with treated recreational water venues (e.g., pools and hot tubs/spas) reported annually.

"Pool chemical–associated health events (e.g., respiratory distress or burns) result in approximately 3,000–5,000 ED visits each year, and almost half of the patients are younger than 18 years of age.

"Code enforcement through inspections of public aquatic facilities is an important tool in preventing recreational water–associated illness and injury. An inspection of a public aquatic facility is an assessment of whether its operation and maintenance meet the standards set in the jurisdiction's public health code. During inspections, environmental health practitioners can serve as illness-and-injury-prevention advisors to pool operators. Immediate closures and violations offer an opportunity to educate operators about how to properly operate and maintain aquatic facilities and why these measures are necessary to prevent repeated violations of given operation or maintenance standards in public aquatic facility codes."

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure public swimming and bathing facilities, including beaches, are designed and operated in a safe and sanitary manner, ensure the water quality standard of these facilities to control for contamination, ensure proper disinfection of water and facilities, and ensure all equipment utilized is fully operational.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation:

Revises the definitions to remove terms not used in the regulation;

Clarifies the construction plan submission requirements;

Clarifies that an inspection is required prior to the air pressure testing and covering of the recirculation piping system;

Adds that the depth of water surrounding an inflatable water feature at a beach where diving is permitted be at least nine and one-half (9 ½) feet deep;

Clarifies the required turnover rates for public swimming and bathing facilities, and spas;

Ensures all openings and grates comply with the federal swimming pool and spa drain cover standards;

Adds the requirement for supplemental ultraviolent light disinfection systems on splash pad with recirculating water systems;

Clarifies that the sue of glass chlorinators for new construction is prohibited, and ensures glass chlorinators, if used on existing facilities, comply with the application Occupational Safety and Health Administration standards for the storage of hazardous chemicals;

Updates the disinfection standards for pools and spas;

Clarifies the life and safety requirements including the required number of lifeguards, and required safety equipment;

Clarifies that a variance request is for construction requirements;

Incorporates the required daily log to be completed by the facility operator, and the inspection forms; and

Makes other amendments to comply with KRS 13A drafting rules.

The amended after comments version of this administrative regulation clarifies the lifeguard and safety equipment requirements, updates the list of violations that would result in immediate closure of the facility, and makes other amendments to comply with KRS 13A drafting rules.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure those seeking to construct or remodel a public swimming and bathing facility are aware of the plan submission, equipment, and pool design requirements; ensure those operating a public swimming and bathing facility, including a beach, are aware of the most current water quality and disinfection standards, and aware of the life safety equipment requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure those operating a public swimming and bathing facility, including a beach, are aware of the most up to date standards to operate the facility in a safe and sanitary manner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 2,250 public swimming pools, bathing facilities, and spas, and thirty-three (33) beaches regulated by the department. The department receives approximately 115 requests for plan review each year.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Pool operators and owners will need to be aware of the updated requirements and ensure their facilities

are in compliance. Beach operators will need to be aware of the updated requirements and ensure their facilities are in compliance. Anyone seeking to modify an existing facility or build a new facility will need to be aware of the plan submission process and the facility requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Regulated facilities are already currently required to be in compliance with the water quality standards. There will be no added costs to facilities to be in compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated facilities will reduce the likelihood of experiencing a water borne disease outbreak, which will allow the facility to operate without interruption.

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

(a) Initially: This is an ongoing program, there is no additional cost.

(b) On a continuing basis: This is an ongoing program, the costs associated with this administrative regulation will be absorbed by current program funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is funded by a mix of state general fund dollars and fees collected for plan review and inspection activities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in funding is not needed to implement the amendment to this administrative regulation. The fees associated with these activities are listed in 902 KAR 10:121.

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

(9) TIERING: Is tiering applied? Tiering is applied. Smaller swimming and bathing facilities have less requirements for equipment, including life safety equipment. Larger swimming and bathing facilities require more life safety equipment, including an increase in the number of required lifeguards. All facilities, regardless of size, are required to meet the water quality standards of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division of Public Health, Protection and Safety, all local health departments, state parks and campgrounds that have a swimming or bathing facility, or beach, and local governments who operate a public swimming or bathing facility, or beach.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), and 211.180(1).

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

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

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

(c) How much will it cost to administer this program for the first year? The costs associated with this amended administrative regulation will be absorbed by current program costs.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this amended administrative regulation will be absorbed by current program 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 29 C.F.R. 1910.119 Occupational Safety and Health Administration regarding the storage of hazardous materials, and 15 U.S.C. 8003- Federal swimming pool and spa drain cover standards.

2. State compliance standards. KRS 211.180 authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the regulation and control of the matters set out below and shall formulate, promote, establish, and execute policies, plans, and comprehensive programs relating to all matters of public health, including the sanitation of public and semipublic recreational areas.

3. Minimum or uniform standards contained in the federal mandate. 29 C.F.R. 1910.119 contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. These releases may result in toxic, fire or explosion hazards.

The federal swimming pool and spa drain cover standards under 15 U.S.C. 8003 requires that effective December 19, 2007, all pools and spas manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard; each public pool and spa in the United States shall be equipped with anti-entrapment devices or systems that comply with the ASME/ANSI A112.19.8 performance standard, or any successor standard.

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 any stricter requirements, or additional or different responsibilities or requirements.

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 010:190. Splash pads operated by local governments.

RELATES TO: KRS 13A.010, Chapter 13B, 211.015, 211.180

STATUTORY AUTHORITY: KRS 194A.050(1), 211.205

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 protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.205 requires the cabinet to promulgate an administrative regulation to set the standards for the operation and maintenance of splash pads operated by local governments. This administrative regulation establishes the procedures for splash pads.

Section 1. Definitions. (1) "Accessible" means, if applied to a fixture, connection, appliance or equipment, having access to it, but may require the removal of an access panel, door or similar obstruction.

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank,

plumbing fixture, receptor or other device, and the flood level rim of the receptacle.

(4) "Alkalinity" or "total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (ppm).

(5) "Approved" means that which is acceptable to the cabinet.

(6) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(7) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(8) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.

(9) "Cabinet" is defined by KRS 211.015(1)(a).

(10) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(11) "Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that must be periodically replaced.

(12) "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.

(13) "Equalizer line" means the connection from the skimmer housing to the holding tank below the weir box, which is sized to satisfy pump demand and prevent air lock or loss of prime, and contains a float valve assembly and pop-up valve.

(14) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

(15) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.

(16) "Filter aid" means an enhancement to the efficiency of the filter media.

(17) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

(18) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit.

(19) "Filtration rate" means the rate of water flow through a filter while in operation.

(20) "Float valve assembly" means a mechanism designed to disengage the skimmer in order to prevent air from entering the pump if the water level drops below the skimmer level.

(21) "Flow meter" means a device that measures the flow of water through piping.

(22) "Head loss" means the total pressure drop between the inlet and the outlet of a component.

(23) "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.

(24) "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.

(25) "Local government" is defined by KRS 13A.010(11).

(26) "Main outlet" means an outlet fitting at the horizontal bottom of a pool through which water passes to a recirculating pump **[~~or surge tank~~]**. It is often referred to as a "main drain."

(27) "Perlite filter" means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that must be periodically replaced.

(28) "Pop-up valve" means a mechanism located under the float valve assembly that opens to allow water to reach the pump when the float valve is activated.

(29) "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.

(30) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(31) "Septum" means that part of the filter element consisting of cloth, or closely woven fabric or other porous material on which the filter cake is deposited.

(32) "Skimmer" means a device designed to continuously remove surface film and water and return it through the filter.

(33) "Splash pad" is defined by **KRS 211.205(1)[~~Ky Acts Ch. 152~~]**.

(34) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(35) "Suction piping" means the portion of the circulation piping located between the facility structure and the inlet side of a pump.

(36) "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available chlorine that is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(37) **[~~"Surge tank" means a storage vessel within the recirculation system used to retain the water displaced by bathers.~~**

[~~(38)~~] "Total discharge head" means the amount of water that a pump will raise water above its center line.

(38)[~~(39)~~] "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(39)[~~(40)~~] "Total residual chlorine" means the arithmetical sum of free available chlorine and combined chlorine, and is composed of the following components:

(a) Free available chlorine, which is the amount of chlorine available to inactivate microorganisms and that has not reacted with ammonia, nitrogenous material, and other contaminants in swimming pool water; and

(b) Combined chlorine (also called "chloramine"), which is the amount of chlorine that has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds.

(40)[~~(41)~~] "Total suction head" means the amount of water that a pump will lift by suction.

(41)[~~(42)~~] "Turnover rate" means the time in hours or minutes, required for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(42)[~~(43)~~] "Weir box" means an overflow system placed at normal operating water surface level to remove surface debris.

Section 2. Submission of Plans and Specifications for Approval. (1) A local government shall not construct, alter, or reconstruct a splash pad until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.

(2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to 902 KAR 10:121.

(3) The front page of the plans submitted for review and approval shall contain the:

(a) Location by city and county;

(b) Name and contact information for the facility operator;

(c) Name of the installer; and

(d) Name of the engineer**, landscape architect,** or architect.

(4) Plans submitted by an engineer or architect shall bear that individual's official seal.

(5) Plans and specifications for splash pads constructed by a local government shall be prepared by an engineer**, landscape architect,** or architect registered in the State of Kentucky.

(6) The plans shall be:

(a) Drawn to scale;

(b) Accompanied by proper specifications to permit a comprehensive review of the plans including the piping and hydraulic details; and

(c) Include:

1. A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

2. A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

3. The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, safety equipment, and other related equipment; and

4. Drawing of equipment room showing placement of equipment, as applicable.

(7) One (1) set of approved plans shall be kept at the job site and available for inspection.

(8) Upon completion of the construction of the recirculation piping system, and prior to such piping being covered and air pressure tested at ten (10) pounds per square inch of pressure for fifteen (15) minutes, the facility operator or builder shall contact the cabinet for inspection.

(9) Upon completion of construction, a notarized statement certifying the splash pad was constructed in accordance with the approved plans and this administrative regulation shall be submitted **by the local government** to the cabinet.

(10) The splash pad shall not be used before receiving a final inspection and written approval from the cabinet.

(11) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(12) No change in location, construction, design, materials, or equipment shall be made to approved plans or the splash pad without the written approval of the cabinet.

Section 3. Water Supplies. (1) Potable water from an approved municipal water system or water district shall be supplied to all splash pad features. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all splash pad fixtures and equipment at the facility.

Section 4. Sewage and Wastewater Disposal. (1) Sewage or wastewater generated from the operation of a splash pad shall discharge to a public sanitary sewer.

(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085.

(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. Such drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment for the breeding of insects.

(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable to a system approved by the cabinet.

Section 5. Refuse Disposal. (1) All refuse at a splash pad shall be disposed of in a manner approved by the Energy and Environment Cabinet.

(2) An adequate number of refuse containers**[~~, with tight fitting lids~~]** shall be provided at readily accessible locations at all splash pads.

Section 6. Facility Design and Construction. All splash pads and attendant structures, as applicable, shall meet the design, materials, fixture, and construction requirements of the State Building Code.

Section 7. Facility Water Treatment Systems. (1)(a) A recirculation system, consisting of a holding tank, pumps, piping, filters, water conditioning, disinfection equipment, skimmers, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all recirculating splash pads;

(b) All system components, including piping, shall bear the **NSF International (NSF)[~~National Sanitation Foundation~~]** potable water (NSF-pw) mark; and

(c) Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.

(2) Holding tanks.

(a) Holding tanks shall be sized at a minimum of five times the manufacturer's requirement for each feature at maximum flow plus the volume of water contained within the recirculation system piping and the drain pipe from the splash pad back to the holding tank.

(b) Holding tanks shall be equipped with an inspection hatch meeting Occupational Safety and Health Administration requirements.

(c) Holding tanks shall be kept locked and inaccessible to the public.

(3) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain a thirty (30) minute turnover rate.

(b) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.

(c) The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;

2. Seventy (70) feet for pressure sand or cartridge filters; or

3. Eighty (80) feet for pressure diatomaceous earth filters and perlite filters.

(d) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(e) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(f) A compound vacuum-pressure gauge or vacuum gauge shall be installed on the suction side of the pump.

(g) A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(h) The manufacturer's pump curve shall be laminated and posted above the recirculation system pump.

(i) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(j) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.

(4) Water heaters shall be installed at all indoor splash pads, and shall comply with the following:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) At least one (1) break proof thermometer shall be:

1. Provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

2. Located in a conspicuous location; and

3. Securely mounted to prevent tampering;

(d) Heaters for indoor splash pads shall be capable of maintaining an overall water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(e) An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to all splash pad features shall be provided, and be accessible only to the facility operator;

(f) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(g) Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code;

(i) Heaters for indoor spray pads shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and

(j) All heaters shall be NSF or UL listed.

(5) A flow meter, if provided, shall be:

(a) Located so that the rate of recirculation may be easily read;

(b) Installed on a straight length of pipe at a distance of at least

ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence except for those specifically designed without distance requirements; and

(c) Installed on each recirculation system, spray pad feature, **[~~waterslide,~~]** any other type of spray feature, and on multiple filtration units.

(6) Vacuum cleaning system shall be:

(a) Provided on all recirculating splash pad holding tanks; and

(b) Capable of reaching all parts of the bottom of the holding tank.

(7) Piping, skimmer, and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.

(b) All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.

(c) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping, and ten (10) feet per second in pressure piping.

(d) Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the holding tank.

(e) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;

2. Holding tank drain and overflow lines; and

3. Pump discharge to waste lines.

(8) Inlets.

(a) Each inlet shall be directionally adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except in facilities equipped with skimmers, which shall be in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire holding tank without the existence of dead spots.

(d) Inlets shall be placed completely around the holding tank with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the holding tank.

(e) A minimum of two (2) inlets is required on all holding tanks regardless of size.

(9) Outlets.

(a) Main suction piping shall be sized for removal of the water through it at a rate of at least 100 percent of the design recirculation flow rate at velocities specified in subsection (7)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(b) At least one (1) skimmer shall be provided for all holding tanks with a minimum of two (2) skimmers provided, except for holding tanks with a water surface area of 144 square feet or less where a minimum of one (1) skimmer shall be required.

(c) Skimmers shall be located to minimize interference with each other.

(d) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate.

(e) Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow.

(f) Skimmers equipped with an equalizer line shall be sized at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and provided with a self-closing valve and cover.

(g) A basket that can be removed without the use of tools and through which all overflow water must pass.

(10) All recirculated splash pads shall be equipped for the addition of make-up water from a potable water source that discharges through:

(a) An air gap of at least six (6) inches; and

(b) Piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.

(11) Filtration.

(a) Filters shall comply with the following:

1. Pressure filters shall have:

a. Pressure gauges;

b. An observable free fall or a sight glass installed on the backwash discharge line; and

c. A manual air-relief valve at the high point;

2. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;

3. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and

4. Filter media shall be listed as NSF approved.

(b) Each facility shall have separate filtration and treatment systems.

(c) Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day except if the facility is closed for repairs or at the end of the swimming season.

(d) Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.

(e) At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.

(f) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(g) Diatomaceous earth filters.

1. The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoating;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water;

5. All filters shall be equipped for cleaning by one (1) or more of the following methods:

a. Backwashing;

b. Air-pump assist backwashing;

c. Spray wash;

d. Water pressure to wash vacuum filter; or

e. Agitation; and

6. Perlite may be used in filters listed by NSF for perlite, but it may not be substituted for diatomaceous earth without NSF listing.

(h) Vacuum sand filters.

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(i) Cartridge filters.

1. Cartridge filters shall only be used on indoor splash pads;

2. The design filtration rate shall not exceed fifteen hundredths (0.15) gallons per minute per square foot of filter surface area; and

3. A clean duplicate set of cartridges shall be maintained at the facility.

(12) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed

of a chemical for pH control, except as stated in paragraph (d) of this subsection.

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of:

a. Eight (8) ppm or two and seven-tenths (2.7) pounds per day chlorine for each 10,000 gallons of holding tank volume for outdoor facilities; or

b. Three (3) ppm or one (1) pound per day for chlorine for each 10,000 gallons of holding tank volume for indoor facilities based on the flow rate specified in subsection (3)(c) of this section.

2. The equipment for supplying chlorine shall not be controlled by an automatic day-date clock.

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter **[~~unless the chlorine injection point is located within the surge tank~~]**.

4. Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.5) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment.

5. Supplemental NSF listed ultraviolet (UV) light disinfection systems shall be provided on all splash pads with a recirculating water system. UV systems should be installed on a bypass line and shall be equipped with a flow indicator.

(c) If positive displacement pumps (hypochlorinators) are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.

(13)(a) Testing equipment shall be provided at all recirculating splash pads, maintained with fresh reagents, and consist of a DPD (Diethyl-P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents are not acceptable;

(b) Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm;

(c) pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4);

(d) Both tests shall be accurate to within two-tenths (0.2) units; and

(e) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.

Section 8. Operational Water Quality Standards. (1) Disinfectant residuals for holding tanks:

(a) Chlorine residual shall be maintained between one (1.0) and five (5.0) ppm as free available chlorine.

(b) Bromine residual shall be maintained between two (2.0) and six (6.0) ppm as free available disinfectant.

(c) Holding tanks stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one **and five-tenths (1.5)[~~(1.0)~~]** to five (5.0) ppm free available chlorine residual; and

3. Cyanuric acid concentration not to exceed fifty (50) ppm.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) ppm.

(2) The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(3) Turbidity. Facility water shall have sufficient clarity at all times so that the bottom of the holding tank is clearly visible by an observer on the deck.

(4) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 ppm, as determined by suitable test kits.

(5) The air temperature at an indoor facility shall be higher than the water temperature.

(6) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, temperature, and pH shall be checked at least three (3) times daily with a greater frequency if usage or climatic conditions warrant.

(b) Turbidity shall be checked daily, or more often as needed.

(c) Alkalinity, cyanuric acid (if used) shall be checked weekly, or more often as needed.

Section 9. General Facility Operation and Maintenance. (1) Operator. A facility operator shall be responsible for the operation and maintenance of all splash pads. The operator shall be available at all times when the facility is open for use.

(2) Facility and facility area.

(a) All facilities shall be maintained free from sediment and debris, and be maintained in good repair;

(b) Decks shall be kept clean. Indoor decks shall be disinfected at least weekly. All areas of the facility shall be kept in good repair, clean, and sanitary; and

(c) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(3) Automatic surface skimmers shall be clean and free of leaves or other debris. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the skimmer system.

(4) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(5) Bather preparation facilities, if provided, shall meet the following:

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily;

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair;

(c) Floors shall be maintained in a nonslip condition;

(d) Soap dispensers shall be filled and operable; and

(e) Adequate supplies of toilet tissue, disposable hand drying towels, or suitable hand drying devices shall be maintained.

(6) Street attire. Shoes of any kind, including water shoes, shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(7) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(8) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility;

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day; and

(c) Recirculation pumps. The pump shall not be throttled on the suction side (except the bottom drain line valve) during normal operation, and shall be kept in good repair and condition. The flow

control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(9) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened as necessary, to remove air which collects in the filter, and following each backwash; and

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) to one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(10) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(11) Flow meters. Flow meters, if used, shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(12) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(13) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(14) Chlorinated cyanurates. The use of chlorinated cyanurates is prohibited.

(15) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH;

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical;

(c) Sodium bisulfate or muriatic acid may be used to lower water pH;

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical; and

(e) The cabinet shall be consulted in the event of unusual pH problems including corrosion or scaling or wide fluctuations in pH.

(16) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose, and removed by the suction cleaner and filtration system.

(17) Miscellaneous chemicals.

(a) Chemicals other than approved disinfectants shall be used only with the advice and under the supervision of the cabinet;

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat, in a clean, dry, and well-ventilated place that prevents unauthorized access to the chemicals;

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions; and

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) ppm.

(18) Equipment rooms.

(a) Equipment necessary for splash pad operation shall be housed in a lighted, ventilated room that affords protection from the weather, prevents unauthorized access, has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and

(e) The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

Section 10. Facility Records. (1) The operator of each facility shall keep a daily record of information regarding operation including disinfectant residuals, pH, maintenance procedures, and recirculation, together with other data as may be required on form DFS-352, Swimming Pool Log Sheet, incorporated by reference in 902 KAR 10:120. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records, which include the following shall be kept showing daily or weekly results as applicable:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level (if applicable); and

(c) Equipment malfunctions.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

(3) All injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health.

Section 11. Spectator and User Administrative Regulations. (1) Rules governing the use of the splash pad and instructions to users shall be displayed on placards at the entrance to the splash pad and enforced by the facility operator.

(2) Admission to the splash pad shall be refused to a person:

(a) Having any contagious disease, infectious conditions such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;

(b) Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and

(c) Under the influence of alcohol, illegal substances, or exhibiting erratic behavior.

(3) No food, drink, gum, tobacco, or vapor producing product, will be allowed.

(4) Personal conduct shall assure that the safety of self and others is not jeopardized.

(5) No running and no boisterous or rough play is permitted.

(6) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the splash pad water is not permitted.

(7) Glass, soap, or other material that creates hazardous

conditions or interferes with efficient operation of the splash pad shall not be permitted in the facility or on the deck.

(8) All apparel worn shall be clean.

(9) Animals shall be excluded from the splash pad and deck area.

Section 12. Facility Inspection. (1) Seasonal facilities.

(a) All operators of seasonal splash pads, prior to opening to the public, shall certify to the cabinet, in writing, that the splash pad is in compliance with the requirements of this administrative regulation except in instances where the cabinet has made an inspection prior to its opening.

1. For seasonal splash pads, the cabinet shall make at least two (2) full inspections during the operating season.

2. The cabinet, at its discretion, may require one (1) of the full inspections to be performed prior to opening.

(b) The facility operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation indoor splash pads shall receive a full inspection by the cabinet at least once each six (6) months.

(3) New splash pads shall receive final construction approval inspections by the cabinet and other affected state and local regulatory agencies prior to placing the splash pad in operation. It shall be the facility operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(4) Splash pads shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of:

(a) Disinfectant residual testing (free available residual) and combined disinfectant in ppm;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing (if cyanuric acid stabilizers are used);

(e) Turbidity assessment;

(f) Temperature testing (if heated water facility);

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris in the holding tank; and

(i) Other checks as necessary.

(5) The cabinet may make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(6) If an agent of the cabinet makes an inspection of a splash pad, the findings shall be recorded on the DFS-349, Public Swimming and Bathing Facilities Inspection, incorporated by reference in 902 KAR 10:120, and a copy provided to the facility operator. The inspection report shall:

(a) Set forth any violation observed;

(b) Establish a specific and reasonable period of time for the correction of the violation observed; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 13. Water Sampling and Testing. (1) A water sample may be collected from the splash pad if inspection or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak, and shall be submitted to the Division of Laboratory Services in an approved container and by approved sampling procedures for analysis.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

(a) Total coliform;

(b) E. coli; and

(c) Pseudomonad organisms.

(3) If a sample is positive test for a contaminant, the test shall be repeated within one (1) to seven (7) days.

(4) For a facility, no more than two (2) consecutive samples shall be positive for:

(a) More than two (2) coliform organisms per 100 milliliter (mL);

(b) Pseudomonas organisms; or

(c) E. coli.

(5) Additional samples may be requested to ensure compliance with this administrative regulation.

Section 14. Bacteriological Quality of Facility Water. No more than two (2) consecutive samples shall:

(1) Contain more than 200 bacteria per mL;

(2) Show a positive test (confirmed test) for coliform organisms in any of the five (5) ten (10) milliliter portions of a sample or more than two (2.0) coliform organism per 100 mL when the membrane filter test is used;

(3) Show a positive test (confirmed test) for pseudomonas organisms; or

(4) Show a positive test for fecal coliform organisms.

Section 15. Conditions requiring Closure of a Splash Pad and Enforcement Provisions. (1) The cabinet shall order the immediate closure of a splash pad and prohibit any person from using the splash pad by written notice to the facility operator if:

(a) There is an immediate danger to health or safety;

(b) The water does not conform to the bacteriological standards contained in this administrative regulation;

(c) Turbidity levels do not meet the requirements of this administrative regulation;

(d) The disinfectant residual is outside the range prescribed in this administrative regulation;

(e) The pH is outside the range prescribed by this administrative regulation;

(f) The cyanuric acid level exceeds fifty (50) ppm;

(g) The facility operator is not available;

(h) There has been a fecal accident in the splash pad;

(i) In any instance where the facility operator, an employee, or representative of the operator interferes with duly authorized agents of the cabinet, bearing proper identification, in the performance of their duties;

(j) If recirculation systems, filtration systems, or disinfectant systems are not in operation (with exceptions for maintenance, and seasonal shut down); or

(k) If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the splash pad and a copy of the notice shall be posted conspicuously at the splash pad by the operator.

(3) Any owner or operator affected by an order is entitled, upon written request on form DFS-212, Request for a Conference, incorporated by reference in 902 KAR 1:400, to a conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

(5) In all other instances of a violation of the provisions of this administrative regulation, or 902 KAR 10:121 for the nonpayment of fees, the cabinet shall issue a written notice specifying the violation in question and afford a reasonable opportunity to correct same. If the facility operator fails to comply with any written notice issued under the provisions of this administrative regulation or 902 KAR 10:121, the facility operator and local government shall be notified in writing that the splash pad shall be closed at the end of ten (10) days following service of such notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet, by the local government, within the ten (10) day period.

(6) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(7) A local government whose splash pad has been closed may, at any time make application for a reinspection on form DFS-215, Application for Reinstatement, incorporated by reference in 902 KAR 45:005, for the purpose of reopening the splash pad. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the splash pad is found to be in compliance with the requirements of this administrative regulation, it shall be reopened.

(8) For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of

the cabinet in the performance of their duties, the splash pad may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400. Prior to the action, the cabinet shall notify the facility operator and local government, in writing, stating the reasons for which the splash pad is subject to closure and advising that it shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator within the ten (10) day period.

Section 16. Effect on Local Administrative Regulations. Compliance with this administrative regulation does not relieve a local government from compliance with any other state or local laws, dealing with splash pad operation and maintenance matters, or zoning requirements that may also be applicable.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary
APPROVED BY AGENCY: November 8, 2021
FILED WITH LRC: November 12, 2021 at 8:a.m.
CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Krista Quarles
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the operation and maintenance procedures of splash pads operated by a local government.
The amended after comments version of this administrative regulation clarifies that a surge tank is not required for splash pads, adds that a landscape architect can design a splash pad, clarifies that the local government entity shall submit the notarized statement that the splash pad was designed and built in accordance with this administrative regulation, and corrects the citation to the National Sanitation Foundation.
(b) The necessity of this administrative regulation: Ky Acts Ch. 152 from the 2021 legislative session establishes a new part of KRS Chapter 211 and requires the cabinet to promulgate an administrative regulation to distinguish the difference between splash pads and swimming pools.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the operation and maintenance standards for splash pads.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure local governments who operate splash pads are aware of the operation and maintenance procedures.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all local governments constructing or remodeling a splash pad.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Local governments who seek to operate a splash pad will need to be aware of the application process, the water supply, and equipment requirements.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The total costs to local governments is not known.
According to Splash Pad USA, the costs associated with building a splash pad ranges from $65,000 to $500,000. "The average cost per month to run a splash pad system for about 6-8 hours a day ranges between $20-$40 per month, depending on electric rates in your area." https://www.splashpadsusa.com/splash-pad-cost/
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Splash pads are less expensive to maintain than traditional swimming pools so local governments will have the benefit of less costs. It is important that a splash pad be designed and constructed in such a way to protect those using the splash pad from any issues with water quality, including any bacteriological or water borne disease outbreak.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The enforcement of this administrative regulation will not add any initial costs to the agency.
(b) On a continuing basis: The enforcement of this administrative regulation will not add any ongoing costs to the agency.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for this administrative regulation will be a mix of state general fund dollars and fees collected under 902 KAR 10:121.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in funding is not necessary to implement the provisions of this administrative regulation.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fee established by this administrative regulation.
(9) TIERING: Is tiering applied? Tier is not applied. The requirements of this administrative regulation will impact all local governments 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 Division of Public Health, Protection and Safety in the Department for Public Health, all local governments who seek to operate a splash pad, and all local health departments who inspect the splash pads.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 211.205.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.
(c) How much will it cost to administer this program for the first year? The costs associated with this administrative regulation will be absorbed by the existing program costs associated with plan review and inspection of swimming and bathing facilities.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this administrative regulation will be absorbed by the existing program costs associated with plan review and inspection of swimming and bathing facilities.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Amended After Comments)

907 KAR 10:815. Per diem inpatient hospital reimbursement.

RELATES TO: KRS 13B.140, 205.510(16), 205.637, 205.639, 205.640, 205.6405, 205.6406, 205.6407, 205.6408[~~205.641~~], 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), 1395tt, 1395ww(d)(5)(F), 1395x(mm), 1396a, 1396b, 1396d, 1396r-4

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), [~~205.637(3), 205.640(1), 205.641(2), 216.380(13)~~], 42 C.F.R. 447.252, 447.253, 42 U.S.C. 1396a, [~~1396r-4~~]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions related to per diem inpatient hospital reimbursement including provisions necessary to enhance reimbursement pursuant to KRS [~~142.308 and~~] 205.638.

Section 1. Definitions. (1) "Base year" means the state fiscal year cost reporting period used to establish a per diem rate.

(2) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(3) "CMS" means Centers for Medicare and Medicaid Services.

(4) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Diagnosis related group" or "DRG" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.

(7) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.25.

(8) "DRG service" means a discharge, excluding crossover claims or no pay claims, assigned a discharge classification by the diagnosis related group grouper used by the department pursuant to 907 KAR 10:830[~~825~~], whether the discharge is reimbursed by discharge or via a per diem basis.

(9) "GII" means Global Insight, Incorporated.

(10) "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.

(11) "Inflation factor" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(12) "Long-term acute care hospital" or "LTAC hospital" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).

(13) "Medical education cost" means a direct cost that is:

(a) Associated with an approved intern and resident program; and

(b) Subject to limits established by Medicare.

(14) "Operating cost" means allowable routine, ancillary service, or special care unit cost related to inpatient hospital care.

(15) "Parity factor" means a factor applied to a per diem rate to establish cost coverage parity with diagnosis related group hospital reimbursement.

(16) "Per diem rate" means a hospital's all-inclusive daily rate as calculated by the department.

(17) "Psychiatric hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:180.

(18) "Rebase" means to redetermine per diem rates using more recent data.

(19) "Rehabilitation hospital" means a hospital meeting the licensure requirements established in 902 KAR 20:240.

(20) "State-designated free-standing rehabilitation teaching hospital that is not state-owned or operated" means a hospital not state-owned or operated which:

(a) Provides at least 3,000 days of rehabilitation care to Medicaid-eligible recipients in a fiscal year;

(b) Provides at least fifty-one (51) percent of the statewide total of inpatient acute rehabilitation care to Medicaid-eligible recipients;

(c) Provides physical and occupational therapy services to Medicaid recipients needing inpatient rehabilitation services in order to function independently outside of an institution post-discharge;

(d) Is licensed as an acute hospital limited to rehabilitation; and

(e) Is a teaching hospital.

(21) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a recipient.

(22) "Third party[~~payor~~]" means a payor of a third party pursuant to KRS 205.510(18)[~~(16)~~].

(23) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.

(24) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

(25) "Weighted average" means an average that reflects an individual element's proportionality to all elements.

Section 2. Payment for Rehabilitation or Psychiatric Care in an In-State Acute Care Hospital. (1) For rehabilitation care in an in-state acute care hospital that has a Medicare-designated rehabilitation or psychiatric distinct part unit, the department shall reimburse:

(a) A facility specific per diem rate based on the most recently received Medicare cost report received prior to the rate year, trended and indexed to the current state fiscal year; and

(b) In accordance with Sections 6 and 9 of this administrative regulation.

(2) The department shall reimburse for rehabilitation or psychiatric care provided in an in-state hospital that does not have a Medicare-designated distinct part unit:

(a) On a facility specific per diem basis equivalent to its aggregate projected payments for DRG services divided by its aggregate projected Medicaid paid days. Aggregate projected payments and projected Medicaid paid days shall be the sum of:

1. Aggregate projected payments and aggregate projected Medicaid paid days for non-per diem DRG services as calculated by the model established in 907 KAR 10:830[~~825~~];

2. Actual prior year payments inflated by the GII; and

3. Per diem DRG service Medicaid days; and

(b) In accordance with Sections 6 and 9 of this administrative regulation.

Section 3. Payment for Long-term Acute Care Hospital Care, In-State Freestanding Psychiatric Hospital Care, and In-State Freestanding Rehabilitation Hospital Care. (1) The department shall reimburse for inpatient care provided to eligible Medicaid

recipients in an in-state freestanding psychiatric hospital, in-state freestanding rehabilitation hospital, or LTAC hospital on a per diem basis.

(2) The department shall calculate a per diem rate by:

(a) Using a hospital's state fiscal year 2005 cost report, allowable cost and paid days to calculate a base cost per day for the hospital;

(b) Trending and indexing a hospital's specific cost, excluding capital cost, per day to the current state fiscal year;

(c) Calculating an average base cost per day for hospitals within similar categories, for example rehabilitation hospitals, using the indexed and trended base cost per day;

(d) Assigning no hospital a base cost per day equaling less than ninety-five (95) percent of the weighted average trended and indexed base cost per day of hospitals within the corresponding category;

(e) Applying a parity factor equivalent to aggregate cost coverage established by the DRG reimbursement methodology established in 907 KAR 10:830[~~825~~]; and

(f) Applying available provider tax funds on a pro-rata basis to the pre-provider tax per diem calculated in paragraphs (a) through (e) of this subsection.

Section 4. Payment to a Newly-participating In-State Freestanding Psychiatric Hospital, Freestanding Rehabilitation Hospital or a Long-Term Acute Care Hospital. (1) The department shall reimburse a newly-participating in-state freestanding psychiatric hospital, freestanding rehabilitation hospital or long-term acute care hospital the minimum per diem rate paid to hospitals in their category until the first fiscal year cost report submitted by the hospital has been finalized.

(2) Upon finalization of the first fiscal year cost report for a facility, the department shall reimburse the facility a per diem rate in accordance with Section 3 of this administrative regulation.

Section 5. Payment for Critical Access Hospital Care. (1) The department shall pay a per diem rate to a critical access hospital equal to the hospital's Medicare rate.

(2) A critical access hospital's final reimbursement for a fiscal year shall reflect any adjustment made by CMS.

(3)(a) A critical access hospital shall comply with the cost reporting requirements established in Section 10 of this administrative regulation.

(b) A cost report submitted by a critical access hospital to the department shall be subject to audit and review.

(4) An out-of-state critical access hospital shall be reimbursed under the same methodology as an in-state critical access hospital.

(5) The department shall reimburse for care in a federally defined swing bed in a critical access hospital pursuant to 907 KAR 1:065.

Section 6. Reimbursement Limit. Total reimbursement to a hospital, other than to a critical access hospital, shall be subject to the limitation established in 42 C.F.R. 447.271.

Section 7. In-State Hospital Reimbursement Updating Procedures. (1) The department shall adjust an in-state hospital's per diem rate annually according to the following:

(a) An operating and professional component per diem rate shall be inflated from the midpoint of the previous universal rate year to the midpoint of the current universal rate year using the GII; and

(b) A capital per diem rate shall not be adjusted for inflation.

(2) The department shall, except for a critical access hospital, rebase an in-state hospital's per diem rate every four (4) years.

(3) Except for an adjustment resulting from an appeal in accordance with Section 21 of this administrative regulation, the department shall make no other adjustment.

Section 8. Use of a Universal Rate Year. (1) A universal rate year shall be established as July 1 through June 30 to coincide with the state fiscal year.

(2) A hospital shall not be required to change its fiscal year to conform to a universal rate year.

Section 9. Cost Basis. (1) An allowable Medicaid cost shall:

(a) Be a cost allowed after a Medicaid or Medicare audit;

(b) Be in accordance with 42 C.F.R. Parts 412 and 413;

(c) Include an in-state hospital's provider tax; and

(d) Not include a cost listed in Section 11 of this administrative regulation.

(2) A prospective rate shall include both routine and ancillary costs.

(3) A prospective rate shall not be subject to retroactive adjustment, except for:

(a) A critical access hospital; or

(b) A facility with a rate based on un-audited data.

(4) An overpayment shall be recouped by the department as follows:

(a) A provider owing an overpayment shall submit the amount of the overpayment to the department; or

(b) The department shall withhold the overpayment amount from a future Medicaid payment due the provider.

Section 10. In-State Hospital Cost Reporting Requirements. (1) An in-state hospital participating in the Medicaid program shall submit to the department a copy of each Medicare cost report it submits to CMS, an electronic cost report file (ECR), and the Supplemental Medicaid Schedule KMAP-1 [~~and the Supplemental Medicaid Schedule KMAP-4 as required by this subsection~~]:

(a) A cost report shall be submitted:

1. For the fiscal year used by the hospital; and

2. Within five (5) months after the close of the hospital's fiscal year.

(b) Except as provided in subparagraph 1 or 2 of this paragraph, the department shall not grant a cost report submittal extension.

1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report.

2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.

(3) A cost report submitted by a hospital to the department shall be subject to audit and review.

(4) An in-state hospital shall submit a final Medicare-audited cost report upon completion by the Medicare intermediary to the department.

Section 11. Unallowable Costs. (1) The following shall not be allowable cost for Medicaid reimbursement:

(a) A cost associated with a political contribution;

(b) A cost associated with a legal fee for an unsuccessful lawsuit against the Cabinet for Health and Family Services. A legal fee relating to a lawsuit against the Cabinet for Health and Family Services shall only be included as a reimbursable cost in the period in which the suit is settled after a final decision has been made that the lawsuit is successful or if otherwise agreed to by the parties involved or ordered by the court; and

(c) A cost for travel and associated expenses outside the Commonwealth of Kentucky for the purpose of a convention, meeting, assembly, conference, or a related activity, subject to the limitations of subparagraphs 1. and 2. of this paragraph:

1. A cost for a training or educational purpose outside the Commonwealth of Kentucky shall be allowable.

2. If a meeting is not solely educational, the cost, excluding transportation, shall be allowable if an educational or training component is included.

(2) A hospital shall identify an unallowable cost on a Supplemental Medicaid Schedule KMAP-1.

(3) A Supplemental Medicaid Schedule KMAP-1 shall be completed and submitted to the department with an annual cost report.

Section 12. Trending of an In-state Hospital's Cost Report Used for Rate Setting Purposes. (1) An allowable Medicaid cost, excluding a capital cost, as shown in a cost report on file in the department, either audited or un-audited, shall be trended to the beginning of the universal rate year to update an in-state hospital's Medicaid cost.

(2) The trending factor, referenced in subsection (1) of this section, to be used shall be the inflation factor prepared by GII for the period being trended.

Section 13. In-State Hospital Indexing for Inflation. (1) After an allowable Medicaid cost has been trended to the beginning of a universal rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

(2) The department shall apply the inflation factor prepared by GII for the universal rate year as the indexing factor.

Section 14. In-State Hospital Minimum Occupancy Factor. (1) If an in-state hospital's minimum occupancy is not met, allowable Medicaid capital costs shall be reduced by:

(a) Artificially increasing the occupancy factor to the minimum factor; and

(b) Calculating the capital costs using the calculated minimum occupancy factor.

(2) The following minimum occupancy factors shall apply:

(a) A sixty (60) percent minimum occupancy factor shall apply to a hospital with 100 or fewer total licensed beds;

(b) A seventy-five (75) percent minimum occupancy factor shall apply to a hospital with 101 or more total licensed beds; and

(c) A newly-constructed in-state hospital shall be allowed one (1) full universal rate year before a minimum occupancy factor shall be applied.

Section 15. Reduced Depreciation Allowance. The allowable amount for depreciation on a hospital building and fixtures, excluding major movable equipment, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.

Section 16. Reimbursement for Out-of-state Hospitals. (1) For inpatient psychiatric or rehabilitation care provided by an acute out-of-state hospital, the department shall reimburse a per diem rate comprised of an operating per diem rate and a capital per diem rate.

(a) The psychiatric operating per diem rate shall be the median operating rate, excluding graduate medical education cost or any provider tax cost, per day for all in-state acute care hospitals that have licensed psychiatric beds pursuant to 902 KAR 20:180.

(b) The psychiatric capital per diem rate shall be the median psychiatric capital per diem rate paid for all in-state acute care hospitals that have licensed psychiatric beds pursuant to 902 KAR 20:180[~~, Psychiatric hospitals; operation and services~~].

(c) The per diem rate shall not include any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts ch. 252.

(2) For care provided by an out-of-state freestanding psychiatric hospital, the department shall reimburse a per diem rate comprised of a psychiatric operating per diem rate and a capital per diem rate.

(a) The psychiatric operating per diem rate shall equal seventy (70) percent of equal the median operating rate, excluding graduate medical education cost or any provider tax cost, per day for all in-state freestanding psychiatric hospitals.

(b) The psychiatric capital per diem rate shall equal seventy (70) percent of the median psychiatric capital per diem cost for all in-state freestanding psychiatric hospitals.

(c) The per diem rate shall not include any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts ch. 252.

(3) For care in an out-of-state rehabilitation hospital, the department shall reimburse a per diem rate equal to the median rehabilitation per diem rate for all in-state rehabilitation hospitals minus any adjustment mandated for in-state hospitals pursuant to 2006 Ky Acts. ch. 252.

(4) The department shall apply the requirements of 42 C.F.R. 447.271 on a claim-specific basis to payments made via this section of this administrative regulation.

Section 17. Supplemental Payments. In addition to a payment based on a rate developed under Section 2, 3, or 4 of this administrative regulation, the department shall:

(1)(a) Make quarterly supplemental payments to an in-state hospital which qualifies as a psychiatric access hospital in an amount:

1.[~~(a)~~] Equal to the hospital's uncompensated costs of providing care to Medicaid recipients and individuals not covered by a third party payor, not to exceed $6 million annually; and

2.[~~(b)~~] Consistent with the requirements of 42 C.F.R. 447.271; or

(b) The department may allow an in-state hospital that qualifies as a psychiatric access hospital to participate in and receive enhanced funding under the Hospital Rate Improvement Program described in 907 KAR 10:840 to provide funding for payments described in Section 17(1) if an average commercial rate methodology is available for that program, provided that:

1. Upon request of the Department for Behavioral Health, Developmental, and Intellectual Disabilities, the qualifying hospital or hospital system agrees to provide behavioral health care for Medicaid recipients and uninsured individuals with no third party coverage;

2. The hospital functions as the state hospital for state mental health in District IV pursuant to 908 KAR 2:040; **[~~and~~]**

3. The payments described in Section 17(1) are not duplicated within the fee-for-service or Hospital Rate Improvement Programs; **and**

4. The hospital complies with the qualifying hospital requirements established in 907 KAR 10:840; and

(2) Make an annual payment to an in-state state-designated free-standing rehabilitation teaching hospital that is not state-owned or operated in an amount:

(a) Determined on a per diem or per discharge basis equal to the nonreimbursed costs of providing care to Medicaid recipients. Costs shall be the amount of cost identified on a hospital's most recent cost report received by the department for a fiscal year reduced by the cost of care covered by third parties; and

(b) Equal to the amount of per diem payments pursuant to this administrative regulation or per discharge diagnosis related group payments pursuant to 907 KAR 10:830[825] received by the hospital for Medicaid recipients not covered by third parties.

Section 18. Certified Public Expenditures. (1) The department shall reimburse an in-state public government-owned hospital the full cost of inpatient care via a certified public expenditure (CPE) contingent upon approval by CMS.

(2) To determine the amount of costs eligible for a CPE, an in-state hospital's allowed charges shall be multiplied by the hospital's operating cost-to-total charges ratio.

(3) The department shall verify whether or not a given CPE is allowable as a Medicaid cost.

(4)(a) Subsequent to a cost report being submitted to the department and finalized, a CPE shall be reconciled with the actual costs reported to determine the actual CPE for the period.

(b) If any difference between actual cost and submitted cost remains, the department shall reconcile any difference with the provider.

Section 19. Access to Subcontractor's Records. If a hospital has a contract with a subcontractor for services costing or valued at $10,000 or more over a twelve (12) month period:

(1) The contract shall contain a provision granting the department access:

(a) To the subcontractor's financial information; and

(b) In accordance with 907 KAR 1:672; and

(2) Access shall be granted to the department for a subcontract between the subcontractor and an organization related to the subcontractor.

Section 20. New Provider, Change of Ownership, or Merged

Facility. (1) If a hospital undergoes a change of ownership, the new owner shall continue to be reimbursed at the rate in effect at the time of the change of ownership.

(2) Until a fiscal year end cost report is available, a newly constructed or newly participating hospital shall submit an operating budget and projected number of patient days within thirty (30) days of receiving Medicaid certification.

(a) A prospective per diem shall be set based on the operating budget and projected number of patient days for care not subject to a diagnosis related group method of reimbursement.

(b) A prospective per diem rate set in accordance with paragraph (a) of this subsection shall be tentative and subject to settlement at the time the first audited fiscal year end report is available to the department.

(c) During the projected rate year, the budget shall be adjusted if indicated and justified by the submittal of additional information.

(3) If two (2) or more separate entities merge into one (1) organization, the department shall:

(a) Merge the latest available data used for rate setting;

(b) Combine bed utilization statistics, creating a new occupancy ratio;

(c) Combine costs using the trending and indexing figures applicable to each entity in order to arrive at correctly trended and indexed costs;

(d) Compute on a weighted average the rate of increase control applicable to each entity, based on the reported paid Medicaid days for each entity taken from the cost report previously used for rate setting;

(e) If one (1) of the entities merging has disproportionate status and the other does not, retain for the merged entity the status of the entity which reported the highest number of Medicaid days paid;

(f) Recognize an appeal of the merged per diem rate in accordance with 907 KAR 1:671; and

(g) Require each provider to submit a Medicaid cost report for the period:

1. Ended as of the day before the merger within five (5) months of the end of the hospital's fiscal year end; and

2. Starting with the day of the merger and ending on the fiscal year end of the merged entity in accordance with Section 10 of this administrative regulation.

Section 21. Appeals. (1) An administrative review shall not be available for a facility or service reimbursed via the per diem methodology for the determination of the requirement, or the proportional amount, of any budget neutrality adjustment used in the calculation of the per diem rate.

(2) An administrative review shall be available for a calculation error in the establishment of a per diem rate.

(3) An appeal shall comply with the review and appeal provisions established in 907 KAR 1:671.

Section 22. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:[

~~(a)~~] "Supplemental Medicaid Schedule KMAP-1", January 2007 edition[~~; and~~

~~(b) "Supplemental Medicaid Schedule KMAP-4", January 2007 edition~~].

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

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at: https://chfs.ky.gov/agencies/dms/MAPForms/KMAP1.XLS.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 9, 2021

FILED WITH LRC: November 12, 2021 at 8:00 a.m.

CONTACT PERSON: Krista Quarles, Policy Specialist, 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 Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program per diem reimbursement policies for hospitals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program reimbursement policies for per diem hospitals.

(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 reimbursement policies for per diem hospitals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the Medicaid program reimbursement policies for per diem hospitals.

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

(a) How the amendment will change this existing administrative regulation: The amendment establishes that certain psychiatric access hospitals can participate in 907 KAR 10:840's Hospital Rate Improvement Program, provided that certain conditions relating to maintained psychiatric admissions are met. The amendment also removes a form – titled the KMAP-4 – that is no longer used, but still submitted. The Amended After Comments version of the administrative regulation clarifies that any psychiatric access hospital that participates in the HRIP program must comply with the qualifying hospital requirements established in DMS' administrative regulation that addresses the HRIP program.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish the parameters by which these hospitals can participate in the hospital rate improvement program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by allowing another private hospital provider to participate in the hospital rate improvement program.

(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 establishing a method of participation in the hospital rate improvement program for a specific type of private hospital.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment applies to those psychiatric hospitals that may participate in the hospital rate improvement program. DMS anticipates that the modifications will apply only to one (1) hospital system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. A hospital designated as a psychiatric access hospital will need to continue meeting psychiatric admissions criteria in order to participate in the hospital rate improvement program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no cost on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The psychiatric access hospitals will receive additional, higher reimbursement by participating in the hospital rate improvement program.

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

(a) Initially: DMS does not anticipate any costs in implementing this administrative regulation.

(b) On a continuing basis: DMS anticipates no continuing cost resulting from the amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations. Some hospital rate improvement funds will be paid by the private hospitals via a provider assessment.

(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 to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the amendment applies to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)

2. State compliance standards. KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Medicaid reimbursement for services is required to be consistent with efficiency, economy, and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to:

".. .. provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Shall 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 than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter or different than the federal standard.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)

907 KAR 23:020. Reimbursement for outpatient drugs.

RELATES TO: KRS 205.5510 to 205.5520, 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, **205.622,** 205.6316(4), 217.015, 42 C.F.R. 440.120, **447.45,** 447.500 - 447.520, 42 U.S.C. 256b, 1396a - 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), **205.5514(1)(b),** 205.520(3), 205.560, 205.561(2), 205.6316(4), **205.647(5),** 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.561(2) and 205.6316(4) require the department to promulgate an administrative regulation to establish the professional dispensing fee for covered drugs. This administrative regulation establishes the Medicaid Program reimbursement requirements, including the professional dispensing fee, for covered outpatient drugs dispensed to all enrolled Medicaid recipients [~~who are not enrolled with a managed care organization~~].

Section 1. Reimbursement. Reimbursement to a pharmacy or medical provider participating in the Medicaid Program for a covered outpatient drug provided to an eligible recipient shall be determined in accordance with the requirements established in this section. (1) A rebate agreement in accordance with 42 U.S.C. 1396r-8(a) shall be signed by the drug manufacturer, or the drug shall be provided based on an exemption from the rebate requirement established by 907 KAR 23:010, Section 5(3).

(2) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(3) Reimbursement shall not be made for more than one (1) prescription to the same recipient during the same time period for a drug with the same:

(a) National Drug Code (NDC); or

(b) Drug or active ingredient name, strength, and dosage form.

(4) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

(a) In accordance with 42 C.F.R. 447.45, a claim shall be submitted to the department within twelve (12) months of the date of service.

(b) The department shall not reimburse for a claim submitted to the department after twelve (12) months from the date of service unless the claim is for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid.

(c) The department shall not reimburse a claim for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid after 365 days have lapsed from the date that the department issued the notice of retroactive eligibility.

(5) Reimbursement shall be denied if:

(a) The recipient is ineligible on the date of service;

(b) The drug is excluded from coverage in accordance with 907 KAR 23:010; or

(c) Prior authorization is required by the department and the request for prior authorization has not been approved prior to dispensing the drug, except in an emergency supply situation.

(6) Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to a third party payer if the provider has knowledge that the third party payer may be liable for payment.

(a) If a provider is aware that a Medicaid recipient has additional insurance or if a recipient indicates in any manner that the recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

(b) A provider who is aware that a recipient may have other insurance, but the other insurance is not identified on the medical assistance identification card or by the recipient, shall notify the

department's fiscal agent of the potential third-party liability.

(7) There shall be no copayment or cost-sharing for an outpatient drug[~~Drug copayment requirements and provisions shall be as established in 907 KAR 1:604~~].

(8) If a payment is made for a drug that was not administered or dispensed in accordance with 907 KAR 23:010 or the payment was not appropriately reimbursed as required by this administrative regulation, the provider shall refund the amount of the payment to the department or the department may, at its discretion, recoup the amount of the payment.

(9) Adherence to the requirements established in this section shall be monitored through an on-site audit, post payment review of the claim, a computer audit, or an edit of the claim.

Section 2. Reimbursement Methodology. (1) Drug cost shall be determined in the pharmacy program using drug pricing and coding information obtained from nationally recognized comprehensive drug data files with pricing based on the actual package size utilized.

(2) Lowest of Logic. Except as provided in Section 4 of this administrative regulation, covered outpatient drug cost shall be reimbursed at the lowest of the:

(a) National Average Drug Acquisition Cost or NADAC, plus the professional dispensing fee;

(b) Wholesale acquisition cost or WAC, plus the professional dispensing fee;

(c) Federal upper limit or FUL, plus the professional dispensing fee;

(d) Maximum allowable cost or MAC, plus the professional dispensing fee; or

(e) The provider's usual and customary charge to the public, as identified by the claim charge**[, plus the professional dispensing fee]**[~~price~~].

(3) A clotting factor shall be reimbursed via the lowest of logic established in subsection (2) of this section and shall include the Average Sales Price plus six (6) percent, plus the professional dispensing fee.

(4) Pursuant to KRS 205.5510 to 205.5520:

(a) Reimbursement methodologies for the managed care population shall be subject to the terms of the awarded contract to administer the single pharmacy benefits manager or PBM for the managed care population.

(b) The single PBM for the managed care population shall not discriminate against 340B contract pharmacies via any reimbursement methodologies utilized.

Section 3. Professional Dispensing Fee. (1) Effective April 1, 2017, the professional dispensing fee for a covered outpatient drug prescribed by an authorized prescriber and dispensed by a participating pharmacy provider in accordance with 907 KAR 23:010, and pursuant to a valid prescription shall be $10.64 per pharmacy provider per recipient per drug per month.

(2) The professional dispensing fee for a compounded drug shall be $10.64 per pharmacy provider per recipient per drug reimbursed up to three (3) times every thirteen (13) days.

Section 4. Reimbursement Limitations. (1) Emergency supply. Dispensing of an emergency supply of a drug shall be made outside of the prescriber's normal business hours and as permitted in accordance with 907 KAR 23:010.

(2) Partial fill. If the dispensing of a drug results in partial filling of the quantity prescribed, including an emergency supply, reimbursement for the drug ingredient cost for the actual quantity dispensed in the partial fill and the completion fill for the remainder of the prescribed quantity shall:

(a) Utilize the lowest of logic established by Section 2 of this administrative regulation; and

(b) Include payment of only one (1) professional dispensing fee, which shall be paid at the time of the completion fill.

(3) Maintenance drugs. The department shall not reimburse for a refill of a maintenance drug prior to the end of the dispensing period established by 907 KAR 23:010 unless the department determines that it is in the best interest of the recipient.

(4) For a nursing facility resident meeting Medicaid nursing facility level of care criteria, and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug paid for by Medicaid shall be returned to the originating pharmacy and the department shall be credited for the drug ingredient cost.

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

(6) 340B Pharmacy Transactions.

(a) A pharmacy dispensing drugs purchased through the 340B Program pursuant to a 340B eligible prescription from a covered entity shall bill the department no more than the actual 340B acquisition cost, plus the professional dispensing fee.

(b) For a 340B purchased drug dispensed by a pharmacy, the lowest of logic shall include the 340B ceiling price.

(c) A drug dispensed by a 340B contract pharmacy shall not be eligible as a 340B transaction and shall be reimbursed in accordance with the lowest of logic as required by Section 2 of this administrative regulation plus the professional dispensing fee.

(d) Reimbursement to a 340B **in-house or** contract pharmacy dispensing a 340B eligible prescription for the managed care population shall not include the 340B ceiling price in the lowest of logic.

(7) Physician administered drugs (PAD).

(a) Federal rebate required. Only covered PAD products that are federally rebateable pursuant to a manufacturer rebate agreement shall be reimbursed.

(b) Non-340B purchased PAD. Reimbursement for drug cost for a drug administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, not purchased through the 340B Program, and submitted for reimbursement as a medical benefit shall be reimbursed only for the drug cost by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. A professional dispensing fee shall not be paid for PAD.

(c) 340B purchased PAD. For a drug purchased through the 340B Program and administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, and submitted for reimbursement as a medical benefit, the lowest of logic required by Section 2 of this administrative regulation shall include the 340B ceiling price. The covered entity shall bill no more than the actual 340B acquisition cost. A professional dispensing fee shall not be paid for PAD.**[**

~~(8) Non-340B hemophilia products. Clotting factors acquired outside of the 340B Program shall be reimbursed by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. The professional dispensing fee established by Section 3 of this administrative regulation shall also be paid.~~]

Section 5. The maximum allowable cost, or MAC, shall be determined by taking into account each drug's cost, rebate status (non-rebateable or rebateable) in accordance with 42 U.S.C. 1396r-8(a), marketplace status (obsolete, terminated, or regional availability), equivalency rating (A-rated), and relative comparable pricing. Other factors considered shall include clinical indications of drug substitution, utilization, and availability in the marketplace. (1) Drug pricing resources used to compare estimated acquisition costs for multiple-source drugs shall include comprehensive data files maintained by a vendor under contract to the department, such as:

(a) NADAC as published by CMS;

(b) WAC, manufacturer's price list, or other nationally recognized sources;

(c) The Average Manufacturers Price for 5i Drugs as reported by CMS;

(d) ASP as published by CMS;

(e) Nationally recognized drug file vendors approved for use at a federal level and that have been approved by the department;

(f) Pharmacy providers; or

(g) Wholesalers.

(2) The department shall maintain a current listing of drugs and

their corresponding MAC prices accessible through the department's pharmacy webpage.

(3) The process for a pharmacy provider to appeal a MAC price for a drug shall be as established in this subsection.

(a) The pharmacy provider shall email or fax a completed Kentucky Medicaid MAC Price Research Request Form to Kentucky's authorized agent in accordance with the instructions on the form.

(b) An appeal of a MAC price for a drug shall be investigated and resolved within three (3) business days.

(c) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the MAC price.

(d) The MAC price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the claim in question, if:

1. It is determined that a manufacturer does not exist in the price range referenced in paragraph (c) of this subsection; or

2. The provider is able to document that despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider.

(e) If an adjusted MAC price becomes effective, the provider shall be informed that the claim may be rebilled for the price adjustment.

Section 6. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 7. Incorporation by Reference. (1) "Kentucky Medicaid MAC Price Research Request Form", 2012, is incorporated by reference.

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

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at https://chfs.ky.gov/agencies/dms/dpo/ppb/Pages/default.aspx[~~http://www.chfs.ky.gov/dms/incorporated.htm~~].

LISA D. LEE, Commissioner
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 5, 2021
FILED WITH LRC: November 12, 2021 at 8:00 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to all Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding all outpatient drugs dispensed or administered to Medicaid 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 establishing DMS's reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to all Medicaid recipients.

(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 DMS's reimbursement provisions and requirements regarding outpatient drugs dispensed or administered to all Medicaid recipients.

(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 implements 2020's SB 50 and the department's awarded request for proposals as required by that legislation. The administrative regulation is amended to clarify when the professional dispensing fee can be assessed, clarify clotting factor reimbursement, and establish professional dispensing fees for compounded drugs. Finally, the regulation is amended to remove cost-sharing and comply with Senate Bill 55's removal of all co-pays.

The Amended After Comments version of the administrative regulation is amended to clarify that a professional dispensing fee is not needed when a usual and customary charge is paid for an outpatient pharmacy prescription. In addition, the regulation is amended to clarify that both in-house and contract 340B pharmacy reimbursement do not include the 340B ceiling price in the lowest of logic methodology. In addition, clotting factor reimbursement is now addressed in Section 2 of the administrative regulation, as a result, Section 4(8) became redundant and is being deleted. Finally, additional citations have been included in the "Relates To" and "Statutory Authority" sections.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is needed to implement 2020's SB 50 and the department's awarded request for proposals as required by that legislation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment allows for the implementation of a single-state PBM as required by KRS 205.5512-.5520.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow for 2020's SB 50 to be fully implemented.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All participating pharmacy providers dispensing covered drugs (approximately 1,500) and all participating medical providers administering covered drugs (approximately 46,000) will be affected by the 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: In order to be reimbursed by the DMS, participating providers will have to submit pharmacy or medical claims for covered outpatient drugs in accordance with this administrative regulation and applicable billing rules.

(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 experienced by affected providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicable providers will benefit by receiving a true drug ingredient cost based reimbursement along with a professional dispensing fee from DMS for dispensing covered outpatient drugs to all Medicaid recipients.

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

(a) Initially: DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

(b) On a continuing basis: DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral.

DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

(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: At this time, DMS does not assess that an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? DMS will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.561(2), 205.6316(4), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8

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

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

(c) How much will it cost to administer this program for the first year? DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that moving to a single PBM model for all Medicaid recipients will be cost-neutral. DMS will continue to assess costs and provide updates via the required reporting functions of 2021's SB 192 and KRS 205.5510 to 205.5520.

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

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: ____

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. Part 447.

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). Revising reimbursement methodology for outpatient drugs dispensed or administered to Medicaid recipients shall not change compliance standards.

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.

PROPOSED AMENDMENTS

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

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(Amendment)

30 KAR 5:060. Search requests, [~~and~~] reports, and copies.

RELATES TO: KRS 355.9-519, 355.9-523, 355.9-525
STATUTORY AUTHORITY: KRS 355.9-526(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the procedures for public access to UCC records [~~requirements governing search requests and reports~~].

Section 1. [~~General Requirements.~~] The filing office[~~officer~~] shall maintain [~~for public inspection~~] a searchable index of active records in the UCC information management system. Active records shall be retrievable by the name of the debtor or by the file number of the related initial financing statement. [~~Regardless of the retrieval method, the following shall be retrieved:~~
~~(1) The initial financing statement; and~~
~~(2) Each active record related to the initial financing statement.~~]

Section 2. [~~Search Requests – Required Information.~~] (1) A request [~~Search requests~~] for certified search results shall be submitted on a completed UCC Information Request Form UCC-11 together with the fee in accordance with KRS 355.9-525(3). [~~include the following:~~
~~(1) Name searched. A search request shall set forth the name of the debtor to be searched using designated fields for organization or individual surname, first personal name, and additional names or initials.~~] A search request shall be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field[~~, without regard to the nature or character of the debtor that is subject of the search~~].[
~~(2) Requesting party. The search request shall include the name and address of the person to whom the search report is to be sent.~~
~~(3) Fee. The five (5) dollar fee shall be tendered, in accordance with KRS 355.9 -525(3), if the request is in writing.~~
~~(4) Search Logic. The request shall specify if a search methodology other than that described in Section 4 of this administrative regulation is to be applied in conducting the search. If methodology is not specified, the methodology described in Section 4 of this administrative regulation shall be applied.~~

~~Section 3. Search Requests - Optional Information.~~]
(a) A search request submitted under this subsection may include the following:
1. A request for[
~~(1)~~] copies. [~~The request may limit the copies of UCC records that would normally be provided with a search report by requesting that no copies be provided or that copies be limited to those UCC records that:~~
~~(a) Include a particular debtor address;~~
~~(b) Include a particular city in the debtor address;~~
~~(c) Were filed on a particular date or within a particular range of dates; or~~
~~(d) Include a particular secured party name.~~]
2.[~~(2) Scope of search.~~] A request[~~requesting party may ask~~] for [~~a search that reports~~] all unlapsed[~~active~~] records retrieved by the search, rather than only active[~~unlapsed~~] records [~~retrieved by the search~~].
(b)[~~(3) Mode of delivery.~~] A search request submitted under this subsection may specify a method[~~mode~~] of delivery for search results. This request shall be honored if the requested method[~~mode~~] is acceptable to [~~made available by~~] the filing office, and provided by the requesting party together with all prepaid [~~requisite~~] fees[~~, under KRS 355.9 -525(3), are tendered~~].
(2) A request for uncertified search results may be submitted online through the filing office website on the Web page designated by the filing office for that purpose.
(3) A request for search results by secured party name may be submitted on a Request for Secured Party Name Search Form.

Section 3.[~~Section 4. Search Methodology.~~] (1) Search results shall be produced by the application of search logic to the name provided by the requesting party [~~presented to the filing officer. Human judgment shall not play a role in determining the results of the search~~].
(2) [~~Standard search logic.~~] The requirements established in this subsection shall describe the filing office's standard search logic and shall apply to all searches [~~unless the search request specifies that a nonstandard search logic be used~~].
(a) There shall not be a limit to the number of matches that may be returned in response to the search criteria.
(b) A distinction shall not be made between upper and lower case letters.
(c) The character "&" (the ampersand) shall be deleted and replaced with the word "and" each place it appears in the name.
(d) Punctuation marks and accents shall be disregarded. For the purposes of this administrative regulation, punctuation and accents include all characters other than the numerals zero through nine (9) and the letters A through Z, in any case, of the English alphabet.
(e) The word "the" at the beginning of an organization debtor name shall be disregarded.
(f) All spaces shall be disregarded.
(g) For first personal name and additional names or initials of individual debtor names, initials shall be treated as the logical equivalent of all names that begin with those initials, and
first personal name and no additional names or initials shall be equated with all additional names or initials. For example, a search request for "John A. Smith" shall cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with the initial "A" or any name beginning with "A" in the additional names or initials field. If the search request is for "John Smith" (first personal name and surnames with no designation in the additional names or initials field), the search shall retrieve all filings against individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname, and with any name or initial or no name or initial in the additional names or initials field.
(h) If the name being searched is the surname of an individual debtor name without any first personal name or additional names or initials provided, the search shall retrieve from the UCC information management system all financing statements with individual debtor names that consist of only the surname.
(i) The following words, phrases, or abbreviations shall be disregarded from the end of an organization name to the beginning of that organization name until an unlisted word, phrase, or abbreviation appears [~~as noise words~~]:
1. "agency";
2. "association";
3. "assn";
4. "associates";
5. "assoc";
6. "assc";
7. "attorney at law";
8. "attorneys at law";
9.[~~8.~~] "bank";
10.[~~9.~~] "national bank";

11.[~~10.~~] "na";
12.[~~11.~~] "business trust";
13.[~~12.~~] "charter";
14.[~~13.~~] "chartered";
15.[~~14.~~] "company";
16.[~~15.~~] "co";
17.[~~16.~~] "cooperative";
18. "coop";
19. "corporation";
20.[~~17.~~] "corp";
21.[~~18.~~] "credit union";
22.[~~19.~~] "cu";
23.[~~20.~~] "federal credit union";
24.[~~21.~~] "fcu";
25.[~~22.~~] "federal savings bank";
26.[~~23.~~] "fsb";
27.[~~24.~~] "general partnership";
28.[~~25.~~] "gen part";
29.[~~26.~~] "gp";
30.[~~27.~~] "incorporated";
31.[~~28.~~] "inc";
32.[~~29.~~] "limited";
33.[~~30.~~] "ltd";
34.[~~31.~~] "ltee";
35.[~~32.~~] "limited liability company";
36.[~~33.~~] "lc";
37.[~~34.~~] "llc";
38.[~~35.~~] "limited liability limited partnership";
39.[~~36.~~] "llp";
40.[~~37.~~] "limited liability partnership";
41.[~~38.~~] "llp";
42. "limited partnership";
43.[~~39.~~]" "lp";
44.[~~40.~~] "medical doctors professional association";
45.[~~41.~~] "mdpa";
46.[~~42.~~] "medical doctors professional corporation";
47.[~~43.~~] "mdpc";
48.[~~44.~~] "national association";
49.[~~45.~~] "partners";
50.[~~46.~~] "partnership";
51.[~~47.~~] "professional association";
52.[~~48.~~] "prof assn";
53.[~~49.~~] "pa";
54. "professional service corporation";
55. "professional service corp";
56. "prof service corporation";
57. "prof service corp";
58.[~~50.~~] "professional corporation";
59.[~~51.~~] "prof corp";
60.[~~52.~~] "pc";
61.[~~53.~~] "professional limited liability company";
62.[~~54.~~] "pllc";
63. "public benefit corporation";
64. "public benefit corp";
65. "pbc";
66. "public benefit";
67.[~~55.~~] "real estate investment trust";
68.[~~56.~~] "registered limited liability partnership";
69.[~~57.~~] "rllp";
70.[~~58.~~] "savings association";
71.[~~59.~~] "sa";
72.[~~60.~~] "sole proprietorship";
73.[~~61.~~] "sp";
74.[~~62.~~] "spa";
75.[~~63.kkk.~~] "trust";
76.[~~64.~~] "trustee"; and
77.[~~65.~~] "as trustee".

(j) After using the requirements outlined in paragraphs (a) through (i) of this subsection to modify the name being searched, the search shall retrieve from the UCC information management system all unlapsed records, or, if requested by the searcher, all active records, that pertain to financing statements with debtor names that, after being modified as provided in [~~Section 5 of~~] this administrative regulation, exactly match the modified name being searched.[

~~Section 5. Changes in Standard Search Logic. If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that will alter search results, the filing office shall provide public notice of the change.~~]

Section 4.[~~Section 6. Search Responses.~~] (1) A response[~~responses~~] to a search request shall include the following:

(a)[~~(1)~~] [~~Copies.~~] A list [~~Copies~~] of all UCC records retrieved by the search[~~, unless only limited copies are requested by the searcher. Copies shall reflect any redaction of personal identifying information required by law.~~

~~(2) Introductory information. A filing officer shall include the following information with a UCC search response~~:

(b)[~~(a) Filing office identification.~~] Identification of the filing office responsible for the search response;

(c)[~~(b) Unique search report identification number. Unique number which identifies the search report;~~

~~(c) Report date and time. The date and time the report was generated~~;

~~(d) Through date and time.~~] The date and time at, or prior to, which a UCC record was filed with the filing office in order for it to be reflected on the search;

(d)[~~(e) Certification date. The certification date and time for which the search is effective;~~

~~(f)] Scope of search;~~

~~(g) Search logic used;~~

~~(h) Search logic disclaimer language;~~

~~(i) Name provided.~~] The name or names searched[~~as provided by searcher~~];[

~~(j) Search string. Normalized name as provided by Section 4 of this administrative regulation~~;

~~(k) Lien type searched. UCC or other type of documents searched;~~] and

(e)[~~(l) Copies.~~] Digital images [~~Copies~~] of all UCC records retrieved[~~revealed~~] by the search in .pdf or .tiff format[~~and requested by the searcher~~]. Any images not available may be requested from the filing office[~~Copies of UCC records shall not be available for electronic search requests~~].

(2)[~~(3) Report.~~] In addition to the information provided under subsection (1) of this section, a response to a request for certified[~~The~~] search results[~~report~~] shall contain the following in a Standard Search Certificate and Report:

(a) [~~Identification. Identification of the filing office responsible for the search report;~~

~~(b) Search report identification number.~~] A certificate [~~Unique~~] number [~~assigned under subsection (2)(b) of this section~~]; [~~and~~]

(b) The date on which the search was certified by the filing office; and

(c) The scope of the search, indicating whether the requesting party has requested active records or only unlapsed records. [~~Identification of financing statement. Identification of each initial financing statement, including a listing of all related amendments, correction statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria, including whether the searcher has requested active records or only unlapsed records. Financing statement information shall include the following:~~

~~1. The initial financing statement file number;~~

~~2. The date and time the initial financing statement was filed;~~

~~3. The lapse date;~~

~~4. The debtor name that appears of record;~~

~~5. The debtor address that appears of record;~~

~~6. The secured party name that appears of record;~~

~~7. The secured party address that appears of record;~~

~~8. An indication of type of each amendment, if any;~~

~~9. The date and time each amendment, if any, was filed;~~

~~10. The amendment file number of each amendment, if any;~~

~~11. The date and time a correction statement, if any, was filed; and~~

~~12. The date and time a filing officer statement, if any, was filed.~~]

(3) A response to a request for a secured party name search shall include only active records and shall not be certified.

Section 5. UCC records and data shall be provided to the public by the following methods:

(1) Copies of individually identified documents shall be provided in digital .pdf format at no charge unless paper copies are specifically requested. Paper copies shall be assessed at the rate of $0.50 cents per page. A request for paper copies shall include a mailing address where the requested copies shall be mailed. Copies may be certified for an additional fee of five (5) dollars.

(2) Bulk data related to UCC filings may be obtained through subscription as directed by the website of the Office of the Secretary of State and shall be made available under the terms and conditions of the subscriber agreement.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: October 29, 2021 at 1:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2022, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 January 31, 2022. 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: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes filing office procedures related to UCC search requests, reports, and copies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing clarity and uniformity with regard to UCC search requests, reports, and copies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, and model UCC regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by establishing clearly defined procedures with regard to UCC search requests, reports, and copies.

(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 modifies existing language to harmonize regulatory language with filing office procedures, authorizing statutes, KRS Chapter 355, Article 9, and model UCC regulations. The amendment also establishes when a search may be certified and the cost, if any, for copies of individually identified UCC documents.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to accurately reflect filing office practices, to accurately reflect UCC index search logic, to accurately reflect search report contents, to comply with KRS Chapter 13A, and to describe how copies may be provided and the corresponding costs, if any.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute by clarifying procedures related to UCC search requests, reports, and copies of individually identified UCC documents.

(d) How the amendment will assist in the effective administration of the statues: This amendment provides clarity and certainty with regard to UCC search requests, reports, and obtaining copies of individually identified UCC documents.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the Office of the Secretary of State and any individual, business, organization, or governmental entity that conducts a search of UCC records.

(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 Office of the Secretary of State already utilizes many of the procedures identified in this regulation. Users of services referenced will not have to take any additional action, but they may experience either a fee elimination or fee increase depending on whether they request electronic or paper copies of UCC documents. Individuals or entities identified in question (3) may need to familiarize themselves with the contents of this regulation if they are conducting a UCC records search.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment eliminates two current fees for obtaining copies of a UCC record in an electronic format, i.e., a $.10 per page fee for regular copies and a $.050 per page fee for certified copies. The vast majority of current requestors are seeking regular or certified copies in an electronic format. These individuals or entities will see a fee decrease. Entities or individuals that request non-certified paper copies of individual UCC documents will see a fee increase from $.10 per page to $.050 per page.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation provides uniformity and certainty with regard to UCC search requests, reports, and obtaining copies of individually identified UCC documents. Electronic copies of individually identified documents will be made available at no cost to the requesting party.

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

(a) Initially: There will be minimal to no cost to implement this administrative regulation.

(b) On a continuing basis: There will be minimal to no costs to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation amendment eliminates two current fees for obtaining copies of a UCC record in an electronic format, i.e., a $.10 per page fee for regular electronic copies and a $.050 per page fee for certified electronic copies. The vast majority of current requests are seeking regular or certified copies in an electronic format. Entities or individuals that request non-certified paper copies of individual UCC documents will see a fee increase

from $.10 per page to $.050 per page.

(9) TIERING: Is tiering applied? Tiering was not applied in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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 Office of the Secretary of State and units, parts, or divisions of state or local government that conduct a search of UCC records.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526.

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.

(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? There will be minimal to no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be minimal to no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency or to other state and local agencies.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Personnel Board
(Amendment)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.005, 18A.0751(1)(e), (4)(e), 18A.111

STATUTORY AUTHORITY: KRS 18A.005, 18A.075(1), 18A.0751(1)(e), (4)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1)(e) requires the Personnel Board to promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.0751(4)(e) authorizes the Personnel Board to promulgate administrative regulations to establish an initial probationary period in excess of six (6) months for specific job classifications. This administrative regulation establishes the requirements relating to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or final month, depending upon the length of initial probationary period, except as established in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

Title Code	Job Classification	Length of Initial Probationary Period
20000538	Golf Course Superintendent I	9 months
20000539	Golf Couse Superintendent II	9 months
20000558	Parks Golf Professional	9 months
20000677	State Park Ranger I	9 months
20000562	Resort Park Manager I	12 months
20000563	Resort Park Manager II	12 months
20000564	Resort Park Manager III	12 months
20000568	Parks Program Services Supervisor	9 months
20000569	Parks Camping/Boat Dock Manager	9 months
20000570	Park Business Manager I	12 months
20000571	Park Business Manager II	12 months
20000572	Park Manager I/Historic Site Manager	12 months
20000573	Park Manager II	12 months
20000574	Park Manager III	12 months
20000609	Conservation Officer Recruit	12 months
20000616	Veterans Benefits Field Rep I	9 months
20000618	Veterans Benefits Regional Administrator	9 months
20000672	Facilities Security Sergeant	12 months
20000673	Facilities Security Lieutenant	12 months
20000676	State Park Ranger Recruit	12 months
20000680	Facilities Security Officer II	12 months
20000683	Mounted Patrol Officer Recruit	12 months
20000687	Police Telecommunicator I	12 months
20000688	Police Telecommunicator II	12 months
20000689	Police Telecommunications Shift Supervisor	12 months
20000690	Police Telecommunications Supervisor	12 months
20000692	CVE Inspector I	12 months
20000694	CJIS (Criminal Justice Information System) Compliance Specialist I	12 months
20000695	CJIS Compliance Specialist II	12 months
20000696	CJIS Compliance Specialist III	12 months
20000697	CJIS Compliance Supervisor	12 months
20000698	Transportation Operations Center Specialist I	12 months
20000703	Polygraph Examiner II	12 months
20000704	Polygraph Examiner I	12 months
20000713	Driver's Test Administrator	12 months
20000719	Law Enforcement Training Instructor I	12 months
20000722	Law Enforcement Training Instructor I - Telecommunications	12 months
20000813	Boiler Inspector I	12 months
20000817	HVAC Inspector I	12 months

20000820	Fire Protection Systems Inspector	12 months
20000821	Industrial Hygienist I	12 months
20000834	OSH Compliance Officer I	12 months
20000852	OSH Safety Consultant I	12 months
20000856	Industrial Hygienist Consultant I	12 months
20000888	Insurance Fraud Investigator I	12 months
20000889	Insurance Fraud Investigator II	12 months
20000890	Insurance Fraud Investigator Supervisor	12 months
20000938	Forensic Firearms and Toolmark Examiner I	12 months
20000940	Forensic Chemist I	12 months
20000941	Forensic Chemist II	12 months
20000943	Forensic Biologist I	12 months
20000944	Forensic Biologist II	12 months
20000953	Forensic Computer Examiner I	12 months
20000954	Forensic Computer Examiner II	12 months
20000955	Forensic Computer Examiner III	12 months
20000963	Therapy Program Assistant	9 months
20000974	Audiologist I	12 months
20001001	Patient Aide I	9 months
20001021	Nursing Investigator	12 months
20001037	Medical Investigator I	12 months
20001038	Medical Investigator II	12 months
20001105	KSB/KSD Administrator III	12 months
20001107	KSB/KSD Administrator V	12 months
20001122	Disability Adjudicator I	12 months
20001125	Social Service Worker I	9 months
20001132	Field Services Supervisor	12 months
20001135	Juvenile Facility Superintendent I	12 months
20001136	Juvenile Facility Superintendent III	12 months
20001137	Facilities Regional Administrator	12 months
20001138	Youth Services Program Supervisor	12 months
20001139	Juvenile Facility Superintendent II	12 months
20001140	Family Services Office Supervisor	12 months
20001142	Human Rights Specialist	12 months
20001157	Administrative Hearing Officer I	12 months
20001159	Human Rights Enforcement Branch Manager	12 months
20001162	Human Rights Research/Information Compliance Supervisor	12 months
20001163	Human Rights Housing Compliance Supervisor	12 months
20001164	Human Rights Employment/Public Accommodations Compliance Supervisor	12 months
20001165	Human Rights Compliance Enforcement Officer II	12 months
20001166	Probation and Parole Officer I	12 months
20001171	Youth Worker I	12 months
20001174	Youth Worker Supervisor	12 months
20001175	Juvenile Services District Supervisor	12 months
20001184	Service Region Administrator	12 months
20001185	Service Region Administrator Associate	12 months
20001186	Service Region Clinical Associate	12 months
[~~20001788~~	~~Revenue Field Auditor I~~	~~12 months~~]
[~~20001807~~	~~Revenue Auditor I~~	~~12 months~~]
20001841	Criminal Intelligence Analyst I	12 months
20001842	Criminal Intelligence Analyst II	12 months
20001876	Law Clerk	12 months
20001895	Environmental Administrative Hearing Officer	12 months
20001904	Investigator I	12 months
21000900	Financial Institutions Examiner I	12 months
21000901	Financial Institutions Examiner II	12 months
21002025	Highway Technician Assistant I	12 months
21002026	Highway Technician Assistant II	12 months
21002027	Highway Technician I	12 months
21002028	Highway Technician II	12 months
21002029	Highway Technician III	12 months
21002030	Highway Technician IV	12 months
21002031	Highway Technician Superintendent I	12 months
21002032	Highway Technician Superintendent II	12 months
21002326	Apprentice I	12 months
21002327	Apprentice II	12 months
21002476	Boards and Commissions Support Specialist	12 months
21002825	Advanced Practice Registered Nurse Investigator	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. If an employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary
period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. A written notification shall be sent to the employee to advise the employee of the effective date of reversion. A copy of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) Except as established in KRS 18A.111, the promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the appropriate month following promotion as established in KRS 18A.005(27).

(4) The promotional probationary period shall be the same length as the initial probationary period for each job classification.

Section 3. Probationary Period Upon Reinstatement. (1) An employee who is reinstated to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status. This shall include an employee ordered reinstated pursuant to KRS 18A.111(3), unless the board rules otherwise.

(2) An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: November 15, 2021

FILED WITH LRC: November 15, 2021 at 11:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 28, 2022, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through end of the day, January 31 2022. 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: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email stafford.easterling@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines the mandatory initial probationary periods of specific job classifications from the effective date of appointment.

(b) The necessity of this administrative regulation: This regulation is necessary to set the requirements of probationary periods.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 18A.075(1)(4)(e) authorizes the Personnel Board to establish initial probationary periods.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide effective administration of the statutes by its requirements to establish probationary periods.

(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 sets the mandatory probationary period for the job classifications of Revenue Auditor I and Revenue Field Auditor I to a six (6) - month term, reducing the current twelve (12) - month probationary period due to organizational need.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide uniformity with the requirements of the Fair Labor Standards Act.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment ensures consistent six (6) - month initial probationary periods within the Department of Revenue's job classifications.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity and consistently required for establishment of initial probationary periods in addition to meeting the needs of the Department of Revenue and the Personnel Cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation as a whole affects all state government agencies; however, this amendment affects only the Department of Revenue and the Personnel Cabinet.

(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 impacted agencies will need to implement minor procedural changes to reflect the reduction of the initial probationary period from twelve (12) months to six (6) months for the two (2) job classifications specified.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By reducing the initial probationary period from twelve (12) to six (6) months for Revenue Auditor I and Revenue Field Auditor I, amongst other benefits, the agencies believe it will result in the improved recruitment and retention of trained, qualified auditors.

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

(a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no ongoing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

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

(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 employees 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? Personnel Board, Personnel Cabinet, and the 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 18A.005, KRS 18A.075(1), and 18A.0751(1)(e), (4)(e).

(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 costs to administer the amendments to this regulation.

(d) How much will it cost to administer this program for

subsequent years? Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this administrative regulation.

BOARDS AND COMMISSIONS
Board of Licensure for Long-Term Care Administrators
(Amendment)

201 KAR 6:040. Renewal, reinstatement, and reactivation of license.

RELATES TO: KRS 36.450, 216A.080, 216A.090, 42 U.S.C. 1396(g)

STATUTORY AUTHORITY: KRS 216A.070(3), 216A.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(3) authorizes the Board of Licensure for Long-term Care Administrators to promulgate administrative regulations necessary for the proper performance of its duties. KRS 216A.090 requires the holder of a license to renew that license biennially and authorizes the board to refuse renewal for failure to comply with KRS Chapter 216A or the administrative regulations promulgated thereunder. This administrative regulation establishes the requirements and procedures for renewal, late renewal, inactive licensure, and reinstatement.

Section 1. License Renewal. (1) A license shall be renewed every two (2) years from date of issue or from date of last renewal. To apply for renewal, a licensee shall:

(a) Submit a completed Renewal Form;

(b) Pay the appropriate renewal fee established in 201 KAR 6:060; and

(c) Provide proof he or she has completed the continuing education requirements established in 201 KAR 6:070, Section 10.

(2) A licensee may renew the license within sixty (60) days of the renewal date by submitting a completed Renewal Form to the board and payment of the late renewal fee established in 201 KAR 6:060. During this sixty (60) day grace period, a licensee may continue to practice as a long-term care administrator.

(3) Except as provided by KRS 36.450, a license not renewed by the end of the sixty (60) day grace period shall expire and the licensee shall not practice in the Commonwealth.

Section 2. Voluntary Inactivation of License. (1) To voluntarily request a license in good standing be placed in inactive status, a licensee shall:

(a) Request inactive status, in writing or through the e-services licensee portal; and

(b) Pay the inactive licensee fee established in 201 KAR 6:060.

(2) A license in inactive status shall expire two (2) years following the date it became inactive unless the licensee renews his or her inactive license biennially by submitting the Renewal Form and submitting payment of the appropriate fee established in 201 KAR 6:060.

Section 3. Expiration Pending Disciplinary Action. (1) A licensee that allows his or her license to expire pursuant to Section 1(3) of this administrative regulation while the licensee is the subject of a complaint as defined in 201 KAR 6:090 shall result in the license expiring in bad standing.

(2) A license that has expired in bad standing shall not be reinstated unless the licensee agrees to submit to the complaints procedure established in 201 KAR 6:090 and responds to the complainant's allegations of misconduct that occurred prior to the license expiring in bad standing. Following the complaints procedure established in 201 KAR 6:090, the board may deny reinstatement of the license on the basis that the complainant's allegations have been sustained, the acts constitute a violation of KRS Chapter 216A or the administrative regulations promulgated thereunder, and that refusal to reinstate the license is an appropriate penalty.

(3)(a) Any person whose license has expired in bad standing may submit a written and signed petition to the board requesting that their licensing file be amended to reflect the person's license expired in good standing and voluntarily submit to the complaint procedure established in 201 KAR 6:090.

(b) Upon receiving a written petition from a person whose license expired in bad standing, and following the complaints procedure established in 201 KAR 6:090, the board shall issue a final order that:

1. Dismisses the underlying complaint and amends the person's licensing file to reflect the license expired in good standing; or

2. Makes findings that the underlying complaint has been substantiated by a preponderance of the evidence and imposes discipline as authorized by KRS 216A.070(1)(f).

(4) The board may, upon the request from a professional licensing board of another state pursuant to the requesting state's laws permitting the transfer or endorsement of a Kentucky long-term care administrator's license, provide the requesting professional licensing board a copy of the full investigative file of the complaint and a statement that the licensee allowed his or her license to expire in bad standing prior to the board fully adjudicating the complaint. The board shall not provide its opinion regarding the merits of the complaint unless the person has voluntarily submitted to the complaints process established in 201 KAR 6:090.

Section 4. Reinstatement of License. (1) To apply for reinstatement of a license expired in good standing, a licensee shall, within two (2) years from the date of expiration:

(a) Submit a completed Application for Licensure, incorporated by reference in 201 KAR 6:020;

(b) Pay the reinstatement fee established in 201 KAR 6:060; and

(c) Provide proof he or she has completed the continuing education requirements established in 201 KAR 6:070, Section 10.

(2) A license shall not be reinstated if the board does not receive the application for reinstatement within two (2) years of the date the license expired. A licensee whose license has been expired for more than two (2) years may apply for a new license pursuant to 201 KAR 6:020.

Section 5. Reactivation of License. (1) To apply for reactivation of a license voluntarily placed in inactive status pursuant to Section 2 of this administrative regulation, a licensee shall, within two (2) years from the date of inactive status:

(a) Submit a completed Application for Licensure, incorporated by reference in 201 KAR 6:020;

(b) Pay the reactivation fee established in 201 KAR 6:060; and

(c) Provide proof he or she has met the continuing education requirements pursuant to 201 KAR 6:070, Section 10.

(2) A license shall not be reactivated if the board does not receive the Application for Licensure within two (2) years of the date the license was either placed in inactive status or renewed in inactive status pursuant to Section 2 subsection (2) of this administrative regulation.

Section 6. Renewal of a Suspended License. (1) To apply for renewal of a license suspended following the complaints procedure established in 201 KAR 6:090, a licensee shall renew his or her license in accordance with Section 1 of this administrative regulation, notwithstanding the fact that the suspension period has not been fully served at the time of renewal.

(2) Renewal shall not entitle the licensee to engage in the practice until the suspension has ended, or is otherwise removed by the board or a court of competent jurisdiction and the right to practice is restored by the board.

Section 7. Renewal or Reinstatement of a Revoked License Prohibited. (1) A license that has been revoked by the board

following the complaints procedure established in 201 KAR 6:090 shall not be renewed or reinstated.

(2) Two (2) years after the date a person's license has been revoked by the board the person may apply for licensure as a new applicant pursuant to 201 KAR 6:020.

(3) The board may deny a new application by a person whose license has been revoked pursuant to KRS 216A.080(1)(c).

(4) If the board denies an application by a person whose license has been revoked pursuant to this section of this administrative regulation, the applicant may appeal the board's decision and request a hearing pursuant to KRS Chapter 13B to provide proof that he or she is of good moral character and is otherwise suitable to practice as a long-term care administrator notwithstanding his or her previously revoked license.

Section 8. Incorporation by Reference. (1) The "Renewal Form", November 2021[~~following material~~] is incorporated by reference[~~:~~

~~(a) "Renewal Form", March 2014; and~~

~~(b) "Application for Licensure", May 2019~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Long-Term Care Administrators, Department of Professional Licensing, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be found on the board's Web site at https://ltca.ky.gov/.

KENNETH URLAGE, Board Chair

APPROVED BY AGENCY: November 4, 2021

FILED WITH LRC: November 12, 2021 at 11:46 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. EST on January 31, 2022, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/89762771546?pwd=Q2RzZXdsN25QZnZPVm5NaHhNOHJGQT09

Password: 416407

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 213515

Find local AT&T Numbers: https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=213515

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 897 6277 1546

Password: 416407

SIP: 89762771546@zoomcrc.com

Password: 416407

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 (January 24), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. EST on January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and procedures for renewal, late renewal, inactive licensure, and reinstatement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the requirements for renewal, late renewal, inactive licensure, and reinstatement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 216A.070 to regulate the practice of long-term care administration and promulgate administrative regulations regarding how to obtain a license. KRS 216A.080 also authorizes the Board to promulgate administrative regulations regarding 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 statute by setting forth the requirements for renewal, late renewal, inactive licensure, and reinstatement.

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

(a) How the amendment will change this existing administrative regulation: It updates the regulation to delete a form, which should not be incorporated in this regulation.

(b) The necessity of the amendment to this administrative regulation: It is necessary to only incorporate the correct form.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 976 individuals licensed by the Board.

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

(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: None. It only updates the form incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. It only updates the form incorporated by reference.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will assist licensees by providing the correct form.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current Board funding will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Licensure for Long-term Care Administrators.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216A.070 and 216A.080

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. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:015. Retaking of examination.

RELATES TO: KRS 317.440, 317.450, 317.570

STATUTORY AUTHORITY: KRS 317.440(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(f) requires the Board of Barbering to promulgate administrative regulations pertaining to exam requirements. This administrative regulation establishes the requirements for an examinee who fails one (1) or more portions of the apprentice [~~probationary~~] examination and wishes to retake the exam.

Section 1. Apprentice [~~Probationary~~] License Examination Requirements. (1) An applicant shall pass each portion of the apprentice [~~probationary~~] examination with a score of at least seventy-five (75) percent.

(2)(a) Except as provided by paragraphs (b) and (c) of this subsection, an applicant who does not successfully complete one (1) portion of the apprentice [~~probationary~~] exam may reapply to sit for the failed portion only.

(b) A passing score on one (1) portion of the apprentice [~~probationary~~] exam shall only be used for a period of one (1) year to exempt the applicant from retaking that portion of the examination.

(c)1. If an applicant has failed one (1) or more portions of the apprentice [~~probationary~~] examination two (2) consecutive times, the applicant shall be required to:

a. Return to a barber school licensed by the board for eighty (80) additional hours of training; and

b. Retake the entire examination.

2. Each unsuccessful attempt to pass the examination thereafter shall require the applicant to complete the conditions delineated in subparagraph 1. of this paragraph.

Section 2. An examination fee shall be required for each examination, in accordance with 201 KAR 14:180.

Section 3. Instructor [~~Teacher~~] License Examination Requirements. (1) An applicant who has failed one (1) or more portions of the instructor [~~teacher~~] exam may reapply to sit for:

(a) The entire exam; or

(b) The failed portion or portions only.

(2) A passing score on one (1) or more portions of the instructor [~~teacher~~] exam shall only be used for a period of one (1) year to exempt the applicant from retaking that portion or portions of the examination.

JASON CROCKETT, Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 15, 2021 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022, at 9:00 a.m., at Kentucky Board of Barbering. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. 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: Christopher D. Hunt, General Counsel, 312 Whittington Pkwy Suite 110, Louisville, Kentucky 40222, phone +1 (502) 782-0778, fax +1 (502) 324-6192, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines and fees for retaking examinations that fails one or more portion of an exam.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy statutory requirements that licensing guidelines be established. The regulation also ensures compliance with requirements to pass Board Exams and obtain licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.440(1)(f) requires the Board of Barbering to promulgate administrative regulations pertaining to exam requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a structure for a student to retake an exam after failure and establishes parameters for anyone who choses to retake the exam.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes confusing language relating to industry licensure and provides continuity of terms.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove language that conflicts industry standards and provides continuity of language with other administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the requirement of KRS 317.440(1)(f) requires the Board of Barbering to promulgate administrative regulations pertaining to exam requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify language used and provide continuity throughout administrative regulations. This will in turn make the administration of regulations more efficient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities when retaking exams for licensure.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? 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? Kentucky Board of Barbering.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? $0-$500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $0-$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:030. Five (5) year expiration of license.

RELATES TO: KRS 317.410, 317.450

STATUTORY AUTHORITY: KRS 317.440, 317.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.450 requires the Board of Barbering to license barbers, authorizes the board to renew a license that has not been expired more than five (5) years, and requires an applicant failing to renew a license within five (5) years of its expiration to comply with the requirements for relicensure established by the board. This administrative regulation establishes the relicensing requirements for a barber whose license has been expired over five (5) years.

Section 1. If a license has been expired for more than five (5) years, an applicant for relicensure shall meet the requirements established in this section.

(1) A barber shall pass both the practical and written examination.

(2) To regain an apprentice [~~a probationary~~] license, an apprentice [~~a probationary~~] barber shall:

(a) Complete 150 additional hours in training in a barber school licensed by the board; and

(b) Pass the practical and written examinations.

(3) An instructor [~~A teacher~~] shall pass both practical and written examinations, in accordance with 201 KAR 14:115.

JASON CROCKETT, Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 15, 2021 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on January 24, 2022, at 9:00 a.m., at Kentucky Board of Barbering. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. 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: Christopher D. Hunt, General Counsel, 312 Whittington Pkwy Suite 110, Louisville, Kentucky 40222, phone +1 (502) 782-0778, fax +1 (502) 324-6192, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines and fees for relicensing after a period of five years of inactivity or lapsed licensure.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy statutory requirements that licensing guidelines be established. The regulation also ensures compliance with requirements to maintain and obtain licensure after a lapse of five years.

(c) How this administrative regulation conforms to the content of the authorizing statutes: STATUTORY AUTHORITY: KRS 317.440, 317.450 NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.450 requires the Board of Barbering to license barbers, authorizes the board to renew a license that has not been expired more than five (5) years.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a structure for a barber or a student to relicense after not having a license for a period of five (5) years, and establishes parameters for anyone who wishes to reestablish licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes confusing language relating to industry standard licensure and provides continuity of terms.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove language that conflicts industry standards and provides continuity of language with other administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the requirement of KRS 317.450 requires the Board of Barbering to license barbers, authorizes the board to renew a license that has not been expired more than five (5) years.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify language used and provide continuity throughout administrative regulations. This will in turn make the administration of regulations more efficient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities when retaking exams for licensure.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? 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? Kentucky Board of Barbering.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? $0-$500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $0-$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA

Expenditures (+/-): NA
Other Explanation: NA

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:040. Inspection of shops and schools.

RELATES TO: KRS 317.440(1), 317.450(2), 317.590
STATUTORY AUTHORITY: KRS 317.440(1), 317.450(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1) requires the Board of Barbering to promulgate administrative regulations governing the location and housing of barber shops or schools and the quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools. KRS 317.450(2) requires the board to refuse to issue a license to a barber who has failed to comply with the provisions of KRS Chapter 317 and 201 KAR Chapter 14. KRS 317.590 authorizes disciplinary action for violations of KRS Chapter 317 and 201 KAR Chapter 14. This administrative regulation establishes requirements relating to the inspection of a barber shop or school and the information to be displayed at a barber shop or school.

Section 1. A board member or authorized agent may inspect a barber shop, manicuring establishment located within a barber shop, or a barber school to determine if the licensee is in compliance with KRS Chapter 317 and 201 KAR Chapter 14.

Section 2. A barber shop or school shall conspicuously display:
(1) The license and picture of each barber and independent contract owner engaged in the practice of barbering at that shop or school; at the station where the barber or student is working;
(2) The license for the barber shop or school; [~~and~~]
(3) The most recent inspection sheet furnished by the board for the barber shop, independent contract owner, or school. The inspection sheet shall include the telephone number and address for a consumer to use to file a complaint against a licensee; and
(4) The permit card and current picture taken within the last twelve (12) months shall be displayed at each student workstation in a school of barbering.

Section 3. The owner and manager of each establishment licensed by the board shall be responsible for compliance with KRS Chapter 317 and 201 KAR Chapter 14. This section shall not apply to violations committed by an independent contract owner, in accordance with KRS 317.595(2).

JASON CROCKETT, Chair
APPROVED BY AGENCY: November 8, 2021
FILED WITH LRC: November 15, 2021 at 11:00 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022, at 9:00 a.m., at Kentucky Board of Barbering. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. 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: Christopher D. Hunt, General Counsel, 312 Whittington Pkwy Suite 110, Louisville, Kentucky 40222, phone +1 (502) 782-0778, fax +1 (502) 324-6192, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes guidelines for the inspection of shops and schools.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy statutory requirements that regular inspections be established. The regulation also ensures compliance with requirements to inspect shops and schools.
(c) How this administrative regulation conforms to the content of the authorizing statutes: 201 KAR Chapter 14. KRS 317.590 authorizes disciplinary action for violations of KRS Chapter 317 and 201 KAR Chapter 14. This administrative regulation establishes requirements relating to the inspection of a barber shop or school
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a structure for the inspections of barbershops and schools, this allows inspectors to identify barbers and student barbers by having a recent photo with their license or permit card located at their workstations.
(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 this allows inspectors to identify barbers and students by having a recent photo with their license or permit card located at their workstations.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to aid in the identification of barbers and students by providing a recent photo with their permit to perform services at a school.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 317.590 authorizes disciplinary action for violations of KRS Chapter 317 and 201 KAR Chapter 14. This administrative regulation establishes requirements relating to the inspection of a barber shop or school and the information to be displayed at a barber shop or school.
(d) How the amendment will assist in the effective administration of the statutes: This amendment aids inspectors in identifying licensees in schools and shops to make sure that people working are actually the people licensed by this chapter.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.
(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.
(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities when retaking exams for licensure.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: None.
(b) On a continuing basis: None.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? 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? Kentucky Board of Barbering.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? $0-$500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $0-$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:050. Apprentice [~~Probationary~~] license; qualifications.

RELATES TO: KRS 317.450(1)(a)-(d)

STATUTORY AUTHORITY: KRS 317.440(1)(d), 317.450(1)(a)-(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.450(1)(a)-(d) requires the Board of Barbering to issue apprentice [~~probationary~~] licenses before issuing a license to practice barbering. KRS 317.440(1)(d) requires the board to promulgate administrative regulations establishing qualifications for barber schools. This administrative regulation establishes the process for obtaining apprentice [~~probationary~~] and barber licenses.

Section 1. An applicant for a license as an apprentice [a ~~probationary~~] barber shall meet the qualifications listed in KRS 317.450(1)(a).

Section 2. A person holding a Kentucky cosmetology license shall be given credit for 750 hours toward a prescribed course of instruction at a school of barbering approved in accordance with 201 KAR 14:095.

Section 3. (1) An apprentice [~~A probationary~~] licensee shall not apply for a barber license until the apprentice [~~probationary~~] period required by KRS 317.450 has been served.

(2) The board may, in individual cases involving medical disability, illness, or undue hard-ship as determined by the board, grant an extension of the apprentice [~~probationary~~] period.

(a) A written request for an extension of time involving medical disability or illness shall be submitted by an applicant and shall be accompanied by a verifying document signed by a licensed physician.

(b) An extension of the apprentice [~~probationary~~] period shall be granted by the board for a period of time not to exceed six (6) months, upon approval of the request and payment of the requisite fee.

(c) If the medical disability, illness, or undue hardship upon which an extension has been granted continues beyond the period of the extension, the applicant shall reapply for an extension.

Section 4. Continuous service consists of working with an apprentice [~~a probationary~~] license in a Kentucky licensed barber shop for an average of twenty (20) hours or more per week for six (6) continuous months.

Section 5. (1) The application for licensure shall include the following information:

(a) The applicant's:

1. Name;
2. Address;
3. County;
4. Phone number; and
5. Email address; and

(b) The barber shop's:

1. Name;
2. Address; and
3. Phone number.[

(2) [~~The application shall contain the question, "Are you in arrears or default on a repayment obligation under any financial assistance program with the Kentucky Higher Education Assistance Authority?"~~

~~(3)~~] The application shall be signed by the applicant.

JASON CROCKETT, Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 15, 2021 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022, at 9:00 a.m., at Kentucky Board of Barbering. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. 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: Christopher D. Hunt, General Counsel,

312 Whittington Pkwy Suite 110, Louisville, Kentucky 40222, phone +1 (502) 782-0778, fax +1 (502) 324-6192, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for gaining an apprentice barber license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the process of licensure upon finishing a barber school program and beginning the apprenticeship.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.450(1)(a)-(d) requires the Board of Barbering to issue apprentice licenses before issuing a license to practice barbering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a structure for the qualifications and procedure for licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes confusing language relating to industry licensure and provides continuity of terms.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove language that conflicts industry standards and provides continuity of language with other administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the requirement of KRS 317.440(1)(f) requires the Board of Barbering to promulgate administrative regulations pertaining to licensure.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify language used and provide continuity throughout administrative regulations. This will in turn make the administration of regulations more efficient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities when retaking exams for licensure.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? 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? Kentucky Board of Barbering.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? $0-$500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $0-$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:065. Place of business requirements.

RELATES TO: KRS 317.440, 317.450

STATUTORY AUTHORITY: KRS 317.410, 317.420, 317.440

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1) requires the Board of Barbering to promulgate administrative regulations establishing requirements for barber shops or schools. This administrative regulation establishes the place of business requirements for licensees.

Section 1. Every apprentice [~~probationary~~] licensee, every licensed barber, and every licensed instructor of barbering regulated by KRS Chapter 317 and 201 KAR Chapter 14 shall

practice in a licensed barber shop or licensed barber school.

JASON CROCKETT, Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 15, 2021 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022, at 9:00 a.m., at Kentucky Board of Barbering. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. 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: Christopher D. Hunt, General Counsel, 312 Whittington Pkwy Suite 110, Louisville, Kentucky 40222, phone +1 (502) 782-0778, fax +1 (502) 324-6192, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes place of business requirements.

(b) The necessity of this administrative regulation: This administrative regulation establishes the place of business requirements for licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.440(1) requires the Board of Barbering to promulgate administrative regulations establishing requirements for barber shops or schools. This administrative regulation establishes the place of business requirements for licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation requires that a student, apprentice or barber may only practice only in a licensed facility.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes confusing language relating to industry licensure and provides continuity of terms.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove language that conflicts industry standards and provides continuity of language with other administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the requirement of: KRS 317.440(1) NECESSITY, FUNCTION, AND CONFORMITY requires the Board of Barbering to promulgate administrative regulations establishing requirements for barber shops or schools. This administrative regulation establishes the place of business requirements for licensees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify language used and provide continuity throughout administrative regulations. This will in turn make the administration of regulations more efficient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities when retaking exams for licensure.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? 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? Kentucky Board of Barbering.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? $0-$500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $0-$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:085. Sanitation requirements.

RELATES TO: KRS 317.410, 317.440

STATUTORY AUTHORITY: KRS 317.410, 317.440

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(b) requires the Board of Barbering to promulgate administrative regulations governing the quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools. This administrative regulation establishes the sanitation requirements.

Section 1. Any barber, apprentice [~~probationary~~] licensee, student barber, manicurist, or instructor of barbering suffering from any contagious diseases or conditions shall not be allowed to practice in this state, in accordance with KRS 317.580. A person suffering from a contagious disease or condition shall not be rendered service by any barber, apprentice [~~probationary~~] licensee, student barber, manicurist, or instructor of barbering in the state.

Section 2. General Sanitation. The entire licensed facility, barber shops, and barber schools, including all equipment, employees, and implements, shall be continually maintained in a sanitary manner, in accordance with KRS 317.580 and this administrative regulation.

Section 3. Methods of Sanitizing. All commercially prepared sanitizing agents shall be used in accordance with the manufacturer's instructions.

Section 4. Disinfection of Implements and Spills; Blood and Body Fluids. (1) Implements and surfaces shall be thoroughly cleaned prior to disinfection because disinfectants are inactivated and ineffective if visibly contaminated with debris, hair, dirt, or particulates or if heavily soiled.

(a) Disinfectants shall be prepared fresh daily or more often if solution becomes diluted or soiled.

(b) Contact Time: A surface shall be left wet or completely immersed for ten (10) minutes or longer, as required by the manufacturer, for disinfecting against HIV, HBV, and all other viruses, bacteria, and fungi.

(2) All used implements shall first be cleaned of visible dirt, debris, or bodily fluids with warm soapy, detergent water and then disinfected by completely immersing in a disinfectant authorized by this subsection.

(a) All nonporous implements that come into contact with intact skin shall be thoroughly cleaned before immersion in a disinfectant authorized by this paragraph. An appropriate disinfect-ant for objects that come into contact with intact skin shall include:

1. An Environmental Protection Agency registered, hospital-grade bactericidal (especially pseudomonacidal), virucidal, and fungicidal that is mixed and used according to the manufacturer's directions; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(b) All nonporous implements which have come in contact with blood or body fluids shall be thoroughly cleaned before immersion in a disinfectant authorized by this paragraph. An appropriate disinfectant shall include:

1. Environmental Protection Agency registered tuberculocides or products registered against HIV/HBV; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(c) For personal protection against blood-borne pathogens, cleanup shall always be done wearing protective gloves, gowns, and eye protection for large spills.

(d) All implements, which have come in contact with blood or body fluids, shall be disinfected by complete immersion in a disinfectant in accordance with this section.

(3) Any nonporous surface that comes in contact with blood or body fluids shall first be cleaned with warm soapy, detergent water, and then a disinfectant shall be used in accordance with this subsection.

(a) An appropriate disinfectant for surfaces which have come in contact with blood or body flu-ids shall include:

1. Environmental Protection Agency registered tuberculocides or products registered against HIV/HBV; or

2. Household bleach in a ten (10) percent solution for ten (10) minutes.

(b) For personal protection against blood-borne pathogens, cleanup shall always be done wearing protective gloves, gowns, and eye protection for large spills.

(4) Household bleach shall be an effective disinfectant for all purposes in a shop or school, with the following considerations:

(a) Bleach solutions shall be mixed daily and used in a ten (10) to one (1) solution, nine (9) parts tap water and one (1) part bleach.

(b) Bleach shall be kept in a closed covered container and not exposed to sunlight.

(c) Each licensee shall be aware that bleach:

1. May produce eye irritation or mouth, esophageal, and gastric burns; and

2. Is corrosive to metals.

(d) Bleach shall not be placed or stored near other chemicals used in salons, such as acrylic monomers, alcohol, other disinfecting products, or near flame because bleach vapors can react with vapors from other chemicals.

(e) Used or soiled bleach solution shall be discarded every day by pouring the solution down a sink basin or toilet bowl.

(5) A bottle container other than the original manufacturer's container used for application of authorized disinfectant shall be properly labeled as to contents, percentage solution, and date mixed.

(6) Cleanup items from minor cuts shall be double bagged or placed in biohazard containers. Licensees shall consult with the local health department for directions about disposal.

(7) All Food and Drug Administration designated "medical devices" shall only be disinfected by Environmental Protection Agency approved disinfectants, which are indicated by their registration number on the product label. The manufacturer's directions for use shall always be followed.

Section 5. Shampoo Bowls. All shampoo bowls, shampoo boards, cups, or similar items shall be sanitized, in accordance with this administrative regulation, after each use.

Section 6. Proper Protection of Neck. (1) A shampoo apron, hair cloth, or similar article shall not be placed directly against the neck of the patron, and these items shall be kept from direct contact with the patron by means of a paper neck band or clean towel.

(2) A neck band of paper or cloth shall not be used more than once.

(3) A towel shall not be used more than once without proper laundering, in accordance with Section 12 of this administrative regulation.

Section 7. Use of Creams. (1) All creams and other semi-solid substances shall be removed from containers with a clean, sanitized spatula.

(2) Spatulas made of a washable, nonabsorbent material shall be sanitized before being used again.

(3) Spatulas made of wood shall be discarded after one (1) use.

Section 8. Use of Styptics. Styptics to arrest bleeding shall be used only in liquid or powder form and shall be applied by clean

gauze, cotton, or any other sanitary item.

Section 9. Special Solution Containers. Product containers shall be used to prevent the contamination of unused solution.

Section 10. Use of Powder. All powder shall be dispensed from a shaker or similar receptacle and shall be applied with disposable puffs or cotton pledgets, or other disposable applicators.

Section 11. Walls and Floors. Walls, floors, and fixtures shall be sanitary and kept clean at all times.

Section 12. Proper Laundering Methods. (1) All cloth towels, robes, and similar items shall be laundered in a washing machine with laundry detergent and chlorine bleach used according to the manufacturer's directions for sanitation purposes.

(2) A closed, dustproof cabinet shall be provided for clean towels and linen, and a closed, dust-proof hamper or receptacle shall be provided for all soiled towels and linens.

Section 13. Personal Hygiene. (1) Any barber, apprentice [~~probationary~~] barber, student barber, manicurist, or instructor of barbering shall wash their hands in antibacterial soap and water before beginning work on any and each patron.

(2) All licensees shall wear a clean, washable outer garment while serving a patron in a shop.

(3) Instruments or implements shall not be carried or stored in pockets, belts, aprons, or smocks.

Section 14. Equipment Sanitation. (1) All equipment used in a shop shall be maintained in a sanitary manner, in accordance with this section.

(2) Razors, scissors, tweezers, combs, rubber disc, parts of vibrators, clippers, trimmers, neck dusters, and any appliances or implements that come in contact with the head, face, neck, and hands shall be sanitized in accordance with the manufacturer's instructions, KRS 317.580, and this administrative regulation and placed in a dry sanitizer such as a properly functioning cabinet sanitizer (light box, UV light) to maintain the sanitation between uses.

(3)(a) Electrical equipment that provides circulating, whirlpool, or vacuum effects (for example, a facial machine, pedicure station, and nail drill) shall be:

1. Cleaned and disinfected after each use; and

2. Flushed, cleaned, and disinfected on a bi-weekly schedule.

(b) A record of this cleaning shall be kept in a log and made available upon any shop inspection.

(c) A bi-weekly cleaning shall include the use of a hospital grade disinfectant or ten (10) percent bleach solution that is circulated through the machine for the minimum time recommended by the manufacturer.

(4)(a) Heated electrical equipment such as thermal irons, pressing combs, and stoves shall be considered sanitized by the heat source.

(b) Unheated parts of heated electrical equipment shall be cleaned and disinfected according to manufacturers' recommendations.

(c) Any other electrical equipment, such as clippers and attachments, shall be cleaned and dis-infected after each use using the following method:

1. Removal of hair and all foreign matter from the equipment; and

2. Complete saturation of clipper blade and attachment with an EPA-registered high-level disinfectant solution, spray, or foam used according to the manufacturer's instructions.

Section 15. (1) Rooms used for multiple purposes, such as massage, shall be permissible as long as all instruments, implements, and supplies are properly sanitized, in accordance with this administrative regulation.

(2) Any barber, apprentice [~~probationary~~] barber, student barber, or instructor of barbering engaged in the practice of barbering work of any kind shall have a minimum of six (6) combs at their disposal. Each work station shall have a bottle of alcohol (ethyl alcohol seventy (70) [~~ninety (90)~~] percent and cotton of the same sanitary condition for the purpose of sanitizing scissors, razors, clippers, and all instruments before and after each use on a patron.

(3) At least one (1) covered waste receptacle for every two (2) work stations shall be provided in each barber shop and barber school for the deposit of soiled towels. An additional covered receptacle for every two (2) work stations shall be provided for the disposal of used paper products.

(4) Laundry work in a barber shop and school shall be prohibited in the same room where any barber service is rendered. Drying of towels or linens on radiators or on lines in a barber shop and barber school shall be prohibited.

(5) The use of the following items shall be prohibited in barber shops and barber schools:

(a) Non-disposable powder puffs;

(b) Sponges;

(c) Lump alum; and

(d) Styptic pencils.

JASON CROCKETT, Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 15, 2021 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022, at 9:00 a.m., at Kentucky Board of Barbering. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. 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: Christopher D. Hunt, General Counsel, 312 Whittington Pkwy Suite 110, Louisville, Kentucky 40222, phone +1 (502) 782-0778, fax +1 (502) 324-6192, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the sanitation requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish parameters and defines levels of sanitation and materials required by statute and administrative regulation can be established and monitored in barbershops and schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.440(1)(b) requires the Board of Barbering to promulgate administrative regulations governing the quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a structure and guidelines for the requirements to open maintain and run a school or barbershop.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes confusing language relating to industry licensure and provides continuity of terms. It makes it easier to comply with sanitation requirements by allowing alcohol that is more readily available and more suitable to use in a shop or school.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove language that

conflicts industry standards and provides continuity of language with other administrative regulations. Additionally this regulation required a higher level of alcohol content than was necessary and available. The change makes it easier for licensees to comply without jeopardizing public safety. This administrative regulation establishes the sanitation requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the requirement of KRS 317.440(1)(b) requires the Board of Barbering to promulgate administrative regulations governing the quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify language used and provide continuity throughout administrative regulations. This will in turn make the administration of regulations more efficient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities when retaking exams for licensure.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? 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? Kentucky Board of Barbering.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? $0-$500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $0-$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:105. Barbering school enrollment and postgraduate requirements.

RELATES TO: KRS 317.410, 317.440, 317.450

STATUTORY AUTHORITY: KRS 317.430, 317.440, 317.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.430(1) requires the Kentucky Board of Barbering to regulate barber schools and the teaching of barbering. KRS 317.440(1) requires the Kentucky Board of Barbering to promulgate administrative regulations governing applicants for barbering licenses. KRS 317.450(1)(b) requires the Kentucky Board of Barbering to ensure that a license to practice barbering shall be issued only if an applicant has acted as a licensed apprentice to a barber for at least six (6), but not more than nine (9) months. KRS 317.450(1)(a)(3) requires the Kentucky Board of Barbering to ensure that a licensed apprentice to a barber has graduated high school or possesses a General Educational Development (GED) certificate or equivalent. This administrative regulation establishes requirements for barbering school enrollment and postgraduate coursework.

Section 1. Enrollment Application. (1) Each student applicant shall complete and submit to the barbering school an Enrollment Application for Barber School, <u>along with the required fee.</u>

(2) Each student applicant shall also submit to the barbering school:

(a) A copy of the applicant's high school:

1. Certificate;
2. Diploma; or
3. Transcript; or

(b) A copy of the applicant's General Educational Development (GED) certificate.

(3) A prospective student shall not attend a barber school until the student has complied with subsections (1) and (2) of this section and the board has notified the school, pursuant to subsection (4)(c)2a of this section, that the board is in receipt of the completed and correct enrollment form and documentation.

(4)(a) The barbering school shall submit to the board the:

1. Student's enrollment application, the required fee; and

2. Documentation required by subsection (2) of this section.

(b) The barbering school shall submit the material required by paragraph (a) of this subsection to the board by:

1. Scanning the application into an electronic format and emailing the application to the board;

2. Fax;

3. Post; or

4. Hand delivery.

(c)1. Upon the first business day that the board receives from the barbering school the material required by paragraph (a) of this subsection and the required permit fee, the board shall print, if the submission was in electronic format, and shall date stamp the material.

2.a. Within two (2) business days of receiving the documentation from the barbering school, the board shall contact the barbering school by phone, fax, or email to alert the school that the student is enrolled and may begin attending.

b. The board shall follow up with an official letter, sent to the barbering school and the student applicant, which shall state the student's official enrollment eligibility date.

Section 2. Postgraduate Requirements. (1) A barbering school shall enroll a student who requests postgraduate coursework if the student has complied with:

(a) Section 1 of this administrative regulation;

(b) 201 KAR Chapter 14; and

(c) KRS Chapter 317.

(2) A barbering school shall not approve postgraduate course credits for less than 150 hours, except in accordance with 201 KAR 14:015 if the applicant has failed the licensing examination twice consecutively.

Section 3. A person who is an owner of a barber school or who can make policy for the school shall not be enrolled in that barber school as a student.

Section 4. Incorporation by Reference. (1) "Enrollment Application for Barber School," is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Barbering, 312 Whittington Parkway, Suite 110, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30p.m.

JASON CROCKETT, Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 15, 2021 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022, at 9:00 a.m., at Kentucky Board of Barbering. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. 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: Christopher D. Hunt, General Counsel, 312 Whittington Pkwy Suite 110, Louisville, Kentucky 40222, phone +1 (502) 782-0778, fax +1 (502) 324-6192, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for barbering school enrollment and postgraduate coursework.

(b) The necessity of this administrative regulation: This administrative regulation establishes requirements for barbering school enrollment and postgraduate coursework.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.430(1) requires the Kentucky Board of Barbering to regulate barber schools and the teaching of barbering. KRS 317.440(1) requires the Kentucky Board of Barbering to promulgate administrative regulations governing applicants for barbering licenses

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for barbering school enrollment and postgraduate coursework.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the process involved in student enrollment.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove language that conflicts industry standards and provides continuity of language with other administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the requirement of KRS 317.430(1) requires the Kentucky Board of Barbering to regulate barber schools and the teaching of barbering.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify language used and provide continuity throughout administrative regulations. This will in turn make the administration of regulations more efficient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities when retaking exams for licensure.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? 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? Kentucky Board of Barbering.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? $0-$500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $0-$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:110. School equipment; plant layout.

RELATES TO: KRS 317.410, 317.440

STATUTORY AUTHORITY: KRS 317.430, 317.440

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(b) requires the board to promulgate an administrative regulation regarding the quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools. This administrative regulation establishes the barber school equipment and plant layout requirements.

Section 1. Each barber school shall send the board a certificate from the zoning commission and a certificate from a licensed electrician or electrical firm showing the electrical equipment to be properly installed, properly grounded, and in safe operating condition.

Section 2. Barber schools shall be completely equipped with standard tonics, dyes, tints, bleaches, shampoos, cosmetics, permanents, etc., all electrical devices and other equipment for the proper instruction of students, as well as with equipment and supplies for sanitation and hygiene.

Section 3. Each barber school shall be located as entirely separate and without a connection to any beauty or barber shop or any other place of business.

Section 4. A barber school shall not be approved by this board having a space less than six (6) feet square for each student enrolled therein.

Section 5. All accredited barber schools shall have a suitable and separate room to be used for demonstration and study. The room shall have necessary charts and equipment to carry out the curriculum, including:

(1) Sufficient charts, blackboards and whiteboards, etc., to teach all subjects of barbering; and

(2) Sufficient classroom chairs with armrests, or desks, that will enable the student to take notes.

Section 6. Every barber school shall maintain a separate lavatory and toilet for male and female students.

Section 7. All barber schools shall comply with city and state building codes and zoning com-mission codes; the board shall be notified upon any changes made to the physical layout of a school.

Section 8. Lockers, dressing rooms, and restrooms shall be provided.

Section 9. Booths and partitions in the work department shall be sufficiently low to permit the observation of students while they are working.

Section 10. A school of barbering shall not be approved by the board having less than the following equipment:

(1) Shampoo bowls with hot and cold running water to be located in the room where barbering is done; one shampoo bowl per every ten (10) students enrolled;

(2) Dryers;[

~~(3) Manicure tables;~~

~~(4) A liquid sterilizer on each manicure table;~~]

(3) [~~(5)~~] Hair cutting chair;

(4) [~~(6)~~] Wall plates;

(5) [~~(7)~~] Covered waste containers;

(6) [~~(8)~~] Individual paper towels; and

(7) [~~(9)~~] Containers for the use of students.

Section 11. (1) Each barbering school shall furnish a supply or dispensing room in which each student may obtain actual experience for a period of one (1) to three (3) weeks, as indicated by the course of instruction. The student will be directly responsible to the owner for any damage incurred due to the student's negligence or willful destruction while working in the supply or dispensing room.

(2) Supply or dispensing and sterilization room equipment required for a barbering school, including:

(a) Supply of clean linens, neck cloths, etc.;

(b) Lavatory for washing all combs, instruments, containers, etc.;

(c) Bottles and containers in use shall be distinctly and correctly labeled;

(d) Wet sterilizer;

(e) Dry sterilizer;

(f) Manicuring sterilizer;

(g) Soap dispenser;

(h) Covered waste container;

(i) Cabinet for supply of clean linens;

(j) Covered containers for soiled linens;

(k) Cabinets for accessories;

(l) Paper towel dispenser or clean towel cabinet for every two (2) stations;

(m) Manicuring cups for preparation of solution from stock supplies; and

(n) Various solutions and preparations used.

Section 12. A barbering school licensed by the board prior to the effective date of this administrative regulation shall not be required to comply with the requirements of Sections 10(1) and 11(2)(l) of this administrative regulation.

JASON CROCKETT, Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 15, 2021 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022, at 9:00 a.m., at Kentucky Board of Barbering. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. 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: Christopher D. Hunt, General Counsel, 312 Whittington Pkwy Suite 110, Louisville, Kentucky 40222, phone +1 (502) 782-0778, fax +1 (502) 324-6192, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the barber school equipment and plant layout requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy statutory requirements for schools and facilities where students and the public are served.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 317.440(1)(b) requires the board to promulgate an administrative regulation regarding the quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a structure for a student to retake an exam after failure and establishes parameters for anyone who choses to retake the exam.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes several obsolete items and requires additional items for schools to aid in teaching and better serve the public. It also requires schools to report physical changes in their facilities.

(b) The necessity of the amendment to this administrative regulation: This amendment removes archaic items no longer necessary and allows new aids to instruct students and better serve the public. It will make it easier to inspect and enforce local state and codes.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the requirement of KRS 317.440(1)(f) requires the Board of Barbering to promulgate administrative regulations pertaining to exam requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify language used and provide continuity throughout administrative regulations. This will in turn make the administration of regulations more efficient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities when retaking exams for licensure.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? 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? Kentucky Board of Barbering.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? $0-$500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $0-$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are

included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:115. Examinations; school and board.

RELATES TO: KRS 317.410, 317.440

STATUTORY AUTHORITY: KRS 317.440

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(e) requires the board to promulgate an administrative regulation to establish examination requirements. This administrative regulation establishes examination applications, deadlines, and sets forth scores for passing.

Section 1. (1)(a) The requirements in this administrative regulation shall apply to all examinations given by the board, unless stated otherwise.

(b) An apprentice [~~A probationary~~] license shall be required to take the barber's examination.

(c) A barber's license shall be required to take the instructor's examination.

(2) A student from a barber school shall not take any of the board's examinations:

(a) Without proof of a high school diploma, transcript, or GED certificate; and

(b) Unless the application for examination has reached the board's headquarters at least seven (7) days prior to the date of the examination.

(3) An applicant for a board examination shall complete the appropriate application form, incorporated by reference in this administrative regulation.

(4) Deadline for applications is at noon (Eastern time) on the deadline date published by the board. Applications received after noon (Eastern time) shall not be scheduled until the following month.

Section 2. The board's examination shall be given only to students who:

(1) Have been notified to appear for the examination;

(2) Are wearing a clean, washable uniform; and

(3) Have instruments to be used in the giving of their demonstrations.

Section 3. The board's examination shall include:

(1) A written examination that covers all subjects set forth in the administrative regulations relating to barbers, 201 KAR Chapter 14; and

(2) A practical demonstration on a living model.

Section 4. An applicant shall pass each portion, practice and theory, of the apprentice [~~probationary~~] examination with a seventy-five (75) percent passing grade on the board's examination.

Section 5. An applicant for an instructor's license shall score a general average of eighty (80) percent on the board's examination.

Section 6. A student who works in a barber shop prior to passing the apprentice[~~probationary~~] examination given by the board shall not be allowed to take the apprentice[~~probationary~~] examination until first:

(1) Paying a fine, as defined in KRS 317.590, in keeping with the seriousness of the violation and the facts of the case; and

(2) Meeting all the requirements of KRS Chapter 317 and 201 KAR Chapter 14.

Section 7. The examination schedule shall be conspicuously displayed on a bulletin board provided by the school.

Section 8. Written and oral tests shall be given at intervals by a school to determine the status of the student.

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

(a) "Apprentice[~~Probationary~~] Barber's Application for Examination," 10/18 [~~6-13~~];

(b) "Barber's Application for Examination," 4/19; [~~6-13~~];

(c) "Instructor's Application for Examination," [~~10-13~~];.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Barbering, 312 Whittington Pkwy. Suite 110, [~~9114 Leesgate Road, Suite 6~~], Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JASON CROCKETT, Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 15, 2021 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022, at 9:00 a.m., at Kentucky Board of Barbering. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. 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: Christopher D. Hunt, General Counsel, 312 Whittington Pkwy Suite 110, Louisville, Kentucky 40222, phone +1 (502) 782-0778, fax +1 (502) 324-6192, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes examination applications, deadlines, and sets forth scores for passing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy statutory requirements that licensing guidelines be established. The regulation also ensures compliance with requirements for testing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.440(1)(f) requires the Board of Barbering to promulgate administrative regulations pertaining to exam requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a structure how, when, where and what requirements are to be met prior to testing.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes confusing language relating to industry licensure and provides continuity of terms, additionally forms are updated and deadlines are clearly stipulated. It also updates board office location.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to remove language that conflicts industry standards and provides continuity of language with other administrative regulations. It clarifies forms, dates and locations required for testing.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the requirement of KRS 317.440(1)(f) requires the Board of Barbering to promulgate administrative regulations pertaining to exam requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify language used and provide continuity throughout administrative regulations. With changes to the postal service it allows clear deadlines to comply with statutory requirements, specifically scheduling of testing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities when retaking exams for licensure.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? 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? Kentucky Board of Barbering.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? $0-$500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $0-$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:125. Instructor ~~[Teacher]~~ requirements.

RELATES TO: KRS 317.440, 317.450

STATUTORY AUTHORITY: KRS 317.440, 317.450(4), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(c) requires the board to promulgate an administrative regulation regarding the qualifications of instructors [~~teachers~~] of barbering. This administrative regulation establishes rules for school faculty and establishes conditions for unlicensed instructor student [~~teachers~~.]

Section 1. (1) An instructor student [~~A teacher~~] shall achieve a passing score on the written instructor [~~teacher's~~] examination.

(2) A passing score shall be a minimum score of eighty (80) percent on the written examination required under subsection (1) of this section, and the oral and practical examinations required under Section 2(1)(b) and (c) of this administrative regulation.

Section 2. (1) An instructor student [~~A teacher~~] shall satisfy the following before the second renewal date as established in KRS 317.450(7)(a):

(a) Complete 400 [~~twelve (12) months and 600~~] hours of instructional experience in a barber school licensed by the board, under the supervision of a board-licensed instructor [~~teacher~~] with a minimum of three (3) years of experience;

(b) Achieve a passing score on the oral instructor [~~teacher's~~] examination required by the board; and

(c) Achieve a passing score on the practical instructor [~~teacher~~'s] examination required by the board.

(2) An instructor student [~~A teacher~~] may request a one (1) time extension of time to complete the requirements of subsection (1) of this section. The extension may be granted by the board to the next renewal date. An extension of time request shall be filed, in writing, with the board no later than July 31 following the second renewal date.

(3) A teaching license shall not be renewed if an instructor student [~~a teacher~~] fails to achieve a passing score on the oral instructor [~~teacher's~~] examination and practical instructor [~~teacher's~~] examination by the second renewal period or upon the

expiration of the extension of time.

(4) An individual whose teaching license is not renewed for failing to achieve a passing score on the oral instructor [teacher's] examination and practical instructor [teacher's] examination within the time period set out in subsection (3) of this section may reapply for an instructor [a teaching] license only after achieving a passing score on the oral instructor [teacher's] examination and practical instructor [teacher's] examination.

Section 3. (1) An instructor [A teacher] shall be present in the classroom of a school during the one (1) hour of classroom instruction required, and in the study of a school during study hours for the practical learning aspects, and will be required to supervise all practice student work.

(2) An instructor student shall be under the face-to-face, direct supervision of an instructor [a teacher] while providing services to a client.

Section 4. A licensed barber shall not render services in a school, and an instructor student [a teacher] shall render services only incident to and for the purpose of instruction.

Section 5. Both instructor and instructor student [A teacher] in an accredited school shall devote his or her entire time during school or class hours to that of instructing the students and shall not apply his or her time to that of private or public practice for compensation during school hours or permit students to instruct or teach other students in the absence of an instructor or instructor student [a teacher].

Section 6. A properly qualified, licensed barber may demonstrate to the students new processes, new preparations, and new appliances in the presence of a licensed instructor [teacher]. A school shall not permit more than four (4) such demonstrations in any calendar year.

Section 7. All services rendered in a school on patrons shall be done by students only. An instructor [A teacher] shall be allowed to teach and aid the students in performing the various services. An instructor student or instructor [A teacher] may finish up the patrons after the students have completed their work.

Section 8. An instructor student and instructor [A teacher] in attendance shall wear a clean, washable outer garment such as a coat or smock.

Section 9. A school shall require an instructor student and instructor [a teacher] to wear an insignia or badge indicating that he or she is an instructor [a teacher].

Section 10. An instructor student [A teacher] who has not completed [twelve (12) months and 600] 400 hours of instructional experience in a barber school licensed by the board under the supervision of a board-licensed instructor [teache]r with a minimum of three (3) years of experience shall document the hours of instructional experience. The documentation shall include the specific dates, times during the day, and the subject matter being instructed. The instructional experience documentation shall be signed by the teacher obtaining the instructional experience, the owner of the barber school where the instructional experience was obtained, and the board-licensed instructor [teacher] with a minimum of three (3) years of experience. This documentation shall be filed with the board prior to taking the examinations required under Section 2(1)(b) and (c) of this administrative regulation.

Section 11. The instructor student [teacher] obtaining the 400 hours [600 hours] of instructional experience and the board-licensed instructor [teacher] with a minimum of three (3) years of experience shall notify the board, in writing, of the mentoring and the notification to the board shall be signed by both. [teachers] The notification shall be submitted prior to the beginning [of the twelve (12) months and 600 hours] of instructional experience.

Section 12. An instructor [A teacher] with a minimum of three (3) years of experience shall not mentor more than two (2) apprentice instructors [teachers] who have not satisfied Section 2(1)(b) and (c) of this administrative regulation.

Section 13. An instructor [A teacher] who is licensed by the board prior to the effective date of this administrative regulation is exempted from the requirements of Section 1 and Section 2(1)(b) and (c) of this administrative regulation.

Section 14. An instructor student [A teacher] in a school shall post [hold] both a barber and barber instructor [teacher's] license issued by the board.[

Section 15. A teacher who has not satisfied the requirements of Section 2(1) of this administrative regulation shall not be considered a teacher for purposes of KRS 317.540(5).]

JASON CROCKETT, Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 15, 2021 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022, at 9:00 a.m., at Kentucky Board of Barbering. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. 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: Christopher D. Hunt, General Counsel, 312 Whittington Pkwy Suite 110, Louisville, Kentucky 40222, phone +1 (502) 782-0778, fax +1 (502) 324-6192, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rules for school faculty and establishes conditions for unlicensed teachers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy statutory requirements that licensing guidelines be established. The regulation also ensures compliance with requirements to acquire requisite hours and to pass Board Exams and obtain licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.440(1)(c) requires the board to promulgate an administrative regulation regarding the qualifications of teachers of barbering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a structure for an instructor student to qualify to sit for the instructor examination and provides a path to licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes confusing language relating to industry licensure and provides continuity of terms. It also reduces the time to qualify from 600 to 400 hours and removes the 12 month requirement to test.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove language that conflicts industry standards and provides continuity of language with other administrative regulations and makes the path for an

instructor license more attainable.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the requirement of KRS 317.440(1)(c) requires the Board of Barbering to promulgate administrative regulations pertaining to exam requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify language used and provide continuity throughout administrative regulations. This will in turn make the administration of regulations more efficient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities when retaking exams for licensure.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? 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? Kentucky Board of Barbering.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? $0-$500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $0-$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:150. School records.

RELATES TO: KRS 317.410, 317.450, 317.540

STATUTORY AUTHORITY: KRS 317.430, 317.440(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(b) requires the Kentucky Board of Barbering to promulgate administrative regulations to govern quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools. This administrative regulation establishes requirements for school records.

Section 1. A monthly attendance record of the entire enrollment, including full-time and part-time students and instructors [~~teachers~~], shall be kept by the schools and received at the board office not later than the tenth calendar day of each month, and shall not be amended after the last day of the month.

(1) A barber school shall be held fully responsible for the completeness and accuracy of the attendance record, which shall show the total hours obtained for the previous month and the total accumulated hours to date for all students and instructors [~~teachers.~~]

(2) Only the hours recorded shall be submitted each month. The report shall not be amended without proof of error, and shall be available for inspection, and not after the last day of the month it was reported.

(3) A copy of the student's daily attendance record for the month of graduation through the date of a student's graduation shall be submitted with the student's certification of hours as part of the application for examination upon completion of the course.

Section 2. A copy of the monthly attendance record, as provided to the board office, shall be posted monthly on a bulletin board in the school so it is available at all times to the students, employees, board members, or agents of the board.

Section 3. (1) Barber schools shall be required to keep a record of a student's daily work, approved and signed by the instructor [~~teacher~~] of each student's practical work, work performed on clinic patrons, and classroom work.

(2) This record shall be available for inspection and shall be included:

(a) With the student's certification of hours and application for examination, upon completion of the course; or

(b) With the certification of hours:
1. If a student withdraws or is dismissed from school; or
2. Upon the closure of a school.

Section 4. (1) A detailed record shall be kept of all enrollments, withdrawals, dismissals, and graduations.

(2) Certification of hours completed, including a copy of the student's daily attendance record for the month of graduation through the date of a student's graduation, shall be forwarded with all records of a student's daily work, to the office of the board within ten (10) calendar days of a student's withdrawal, dismissal, graduation, or closure of the barber school. Completed course hours provided to the board office shall be accurate and shall be recorded in the student's file.

(3) Completed course hours submitted to the board shall be transferable to another barbering school for no more than five (5) years.

(4) Records filed with the board shall be maintained for five (5) years, then destroyed in accordance with the board's retention schedule on file with the State Archives and Records Commission.

Section 5. (1) All records shall be kept in a lockable file on the premises of the school and shall be available for inspection.

(2) The security of all records shall be the responsibility of the school.

(3) Records shall be locked if not in use or during nonbusiness hours.

Section 6. A school shall immediately produce a copy of any record maintained under this administrative regulation when requested by the board during hours when the school is scheduled to be open and providing services. If the request is made during hours when the school is closed and not providing services, the school shall produce a copy of any record maintained under this administrative regulation within two (2) hours of the next normal day of business.

JASON CROCKETT, Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 15, 2021 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022, at 9:00 a.m., at Kentucky Board of Barbering. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. 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: Christopher D. Hunt, General Counsel, 312 Whittington Pkwy Suite 110, Louisville, Kentucky 40222, phone +1 (502) 782-0778, fax +1 (502) 324-6192, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for school records.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy statutory requirements that licensing guidelines be established. The regulation also ensures compliance with requirements of schools to provide accurate reporting in a timely manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.440(1)(b) requires the Kentucky Board of Barbering to promulgate administrative regulations to govern quantity and quality of equipment, supplies, materials, records, and furnishings required in barber shops or schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a structure for schools to report information required to qualify for graduation and testing. It also sets timeframes that allows for change but not indefinitely.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes confusing language relating to industry licensure and provides continuity of terms. It also clarifies expectations for schools in reporting and allows a window to fix errors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove language that conflicts industry standards and provides continuity of language with other administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: It helps schools provide better records and allows a window to correct misinformation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify language used and provide continuity throughout administrative regulations. This will in turn make the administration of regulations more efficient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities when retaking exams for licensure.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied?. 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? Kentucky Board of Barbering.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? $0-$500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $0-$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA
Expenditures (+/-): NA
Other Explanation: NA

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:180. Fees.

RELATES TO: KRS 317.450
STATUTORY AUTHORITY: KRS 317.440(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(2) requires the Board of Barbering to establish fees by administrative regulation. This administrative regulation establishes fees for examinations, permits, and licenses issued by the board.

Section 1. Initial licensing fees shall be as follows:
(1) Apprentice license: fifty (50) dollars;
(2) Barber license: fifty (50) dollars;
(3) Barber school license: ~~$500~~;
(4) Barber shop license: ~~$100~~;
(5) Endorsement: ~~$250~~;
(6) Instructor [~~Teacher~~] of barbering license: ~~$100;~~ and
(7) Independent contract owner: fifty (50) dollars.

Section 2. Examination fees shall be as follows:
(1) Apprentice examination ~~$200;~~
(2) Barber examination: ~~$200;~~ and
(3) Instructor [~~Teacher~~] of barbering examination: $100 per section (three (3) sections) [~~$250~~].

Section 3. Renewal fees shall be as follows:
(1) Barber: fifty (50) dollars;
(2) Instructor [~~Teacher~~] of barbering: ~~$100~~;
(3) Barber shop: fifty (50) dollars;
(4) Barber school: ~~$200;~~ and
(5) Independent contract owner: fifty (50) dollars.

Section 4. (1) The fee for renewal of a license that has been expired for five (5) years or less shall be the lapse fee defined in KRS 317.410(9) in addition to the late fee set forth below:
(a) Barber fee: twenty-five (25) dollars;
(b) Instructor [~~Teacher~~] of barbering fee: fifty (50) dollars [~~$100~~]
(c) Barber shop fee: twenty-five (25) dollars;
(d) Barber school fee ~~$100~~ and
(e) Independent contract owner: twenty-five (25) dollars.

Section 5. Miscellaneous fees shall be as follows:
(1) Duplicate license: ten (10) dollars;
(2) Certification of license: fifty (50) dollars; and
(3) Demonstration permit: ~~$100;~~ and
(4) Student permit card: fifteen (15) dollars;
(5) Instructor student permit card: $100.

Section 6. All fees received by the Kentucky Board of Barbering shall be non-refundable.

Section 7. If a license or permit is lost, destroyed, or stolen after issuance, a duplicate li-cense may be issued. The applicant shall submit to the board a Duplicate License Request form to verify the loss of the license or permit. Each duplicate license or permit shall be marked "duplicate."

Section 8. Incorporation by Reference. (1) The "Duplicate License Request", May 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Barbering, 312 Whittington Parkway, Suite 110, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 pm.

JASON CROCKETT, Chair
APPROVED BY AGENCY: November 8, 2021
FILED WITH LRC: November 15, 2021 at 11:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022, at 9:00 a.m., at Kentucky Board of Barbering. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. 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: Christopher D. Hunt, General Counsel, 312 Whittington Pkwy Suite 110, Louisville, Kentucky 40222, phone +1 (502) 782-0778, fax +1 (502) 324-6192, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees for examinations, permits, and licenses issued by the board.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy requirements and guidelines for fees. The regulation also explains the process for duplicates if required.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.440(2) requires the Board of Barbering to establish fees by administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a clear fee structure explain all examination, license, renewal and permit fees, for students, apprentices, barbers, shops and schools.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes confusing language relating to industry licensure and provides continuity of terms.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove language that conflicts industry standards and provides continuity of language with other administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the requirement of KRS 317.440(2) requires the Board of Barbering to establish fees by administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify language used and provide continuity throughout administrative regulations. This will in turn make the administration of regulations more efficient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities when retaking exams for licensure.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to this amendment.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? 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? Kentucky Board of Barbering.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? $0-$500.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $0-$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS
Board of Nursing
(Amendment)

201 KAR 20:220. Nursing continuing education provider approval.

RELATES TO: KRS 314.011(12), 314.073, 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.073(3), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(2) and 314.073(3) require the Board of Nursing to promulgate administrative regulations establishing requirements for continuing competency and approval of providers of continuing education. This administrative regulation establishes requirements for providers of continuing education.

Section 1. Definition. "Continuing education activity" means an offering given by a provider of continuing education who has been approved or accepted by the board and that relates to the practice of nursing or contributes to the competency of a nurse extending knowledge beyond that obtained in initial nursing preparation or pertinent to specific work requirements.

Section 2. (1) A provider of continuing education applicant who wants approval by the board to offer a continuing education activity shall submit an:

(a) Application for Continuing Education Provider Approval, in electronic format; and

(b) Application fee as established in 201 KAR 20:240.

(2) If an application is approved, the board shall issue a provider number to the applicant.

(3) On or before September 30 of the year in which an

approval period expires, an approved provider shall submit the:

(a) Application for Continuing Education Provider Renewal, in electronic format; and

(b) Fee as established in 201 KAR 20:240.

(4) Renewal shall be for two (2) years.

(5) (a) A continuing education activity that is given by a continuing education provider that has received approval by one (1) of the following organizations shall be accepted by the board:

1. American Association of Nurse Practitioners;
2. American Association of Critical Care Nurses;
3. American Association of Nurse Anesthetists;
4. American College of Nurse Midwives;
5. American Nurses Credentialing Center;
6. Association of Women's Health, Obstetric and Neonatal Nurses;
7. Nurse Practitioners in Women's Health;
8. National Association of Pediatric Nurse Practitioners;
9. National Association for Practical Nurses Education and Service;
10. National Association of Licensed Practical Nurses;
11. National League for Nursing; or
12. State Boards of Nursing.

(b) Paragraph (a) of this subsection shall include a provider that offers a continuing education activity related to the pharmacology requirement[~~established~~] in 201 KAR 20:215[~~, Section 5(1)(a)~~].

(6)(a) An organization that approves nursing continuing education may request that it be added to this administrative regulation.

(b) An organization shall be included in this administrative regulation if its standards are comparable to the standards established by the provisions of this administrative regulation.

Section 3. (1) The board may review a provider's continuing education activities or approval status at any time.

(2) Except as provided in subsection (3) of this section, if after a review of a provider it is determined that the provider does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny or limit the provider's approval status.

(3) If after a review of a continuing education activity it is determined that the activity does not comply with this administrative regulation, the board shall send the provider notice of its intent to deny approval status for subsequent offerings of that specific continuing education activity.

(4) (a) A request for a hearing before the board shall be filed within ten (10) days of receipt of the board's notice.

(b) If a provider fails to submit a request for a hearing within the time established in paragraph (a) of this subsection, the board shall implement the action proposed in its notice.

Section 4. Providers shall comply with the standards in this section. (1) (a) A registered nurse who meets the qualifications established in paragraph (b) of this subsection shall be administratively responsible for continuing education activities, including:

1. Planning;
2. Development;
3. Implementation; and
4. Evaluation.

(b) A nurse administrator shall:

1. Hold a current license or privilege to practice;
2. Have experience in adult education; and
3. Hold a baccalaureate or higher degree, in nursing.

(c) The provider may designate an alternate nurse administrator who shall meet the requirements established in paragraph (b) of this subsection.

(2) Organized learning activities shall be based upon a reasonable justification supporting the need for the continuing education that:

(a) Enhances the quality, safety, and effectiveness of care provided by nurses; and

(b) Contributes directly to the competence of a nurse.

(3) The content of nursing continuing education shall be designed to:

(a) Present current theoretical knowledge to enhance and expand nursing skills; and

(b) Promote competence in decision making.

(4) Outcomes for continuing education activities shall be: (a) Related to nursing practice and interventions;

(b) Stated in clearly defined expected learner outcomes; and

(c) Consistent with evidence of a need for the continuing education activity.

(5) The continuing education activity shall reflect planning among the nurse administrator, faculty, and content experts.

(6)(a) The content for each educational activity shall be documented in provider files and shall include the following:

1. The presentation schedule;
2. The name and credentials of the presenter and the topic to be covered;
3. Times for meals and breaks, if applicable;
4. Teaching methods, with corresponding time frames, for each content area; and
5. Learner outcomes.

(b) 1. The content shall be relevant to and consistent with the learner outcomes.

2. The learner outcomes shall provide statements of observable behaviors that present a clear description of the competencies to be achieved by the learner.

(7) Teaching methods shall be consistent with the content and learning outcomes and objectives, and shall reflect the use of adult learning principles. Activities of both the teacher and the learner shall be specified.

(8) Faculty for continuing education activities shall have: (a) Documented expertise in the subject matter; and

(b) Experience in presenting to adult learners[~~and facilitating adult learning~~].

(9) The name, title and credentials identifying the educational and professional qualifications for each faculty member shall be retained in the provider offering files.

(10) Resources allocated for the continuing education activity shall be adequate in terms of education unit organization, with fiscal support for adequate staff, facilities, equipment, and supplies to ensure quality teaching and learning in a comfortable environment that is accessible to the target audience.

(11) Participants shall be provided with essential information for review prior to registration. This information shall include:

(a) Learner outcomes;
(b) Content overview;
(c) Date, time, and presentation schedule;
(d) Presenter;
(e) Number of contact hours;
(f) Fee and refund policy;
(g) Target audience and any prerequisites; and
(h) Requirements for successful completion that shall be clearly specified and shall include a statement of policy regarding candidates who fail to successfully complete the continuing education activity.

(12) Published information about continuing education activities offered by providers approved by the board shall include the provider number.

(13)(a) A provider shall notify the board in writing within thirty (30) days of any changes in its administration, such as nurse administrator, mailing address, or telephone number.

(b) Information relevant to the qualifications of the new nurse administrator as established in subsection (1)(b) of this section shall be sent to the board.

(c) If a qualified nurse is not available to serve in the capacity of the administrator, the provider shall not offer any continuing education activity until a qualified nurse administrator is appointed.

(14) A provider shall designate and publish the number of hours of any portion of an offering dedicated to the pharmacology requirement of 201 KAR 20:215[~~, Section 5(1)(a)~~].

(15) Records of continuing education activities shall be maintained for a period of five (5) years, including the following:

(a) Title, date, and format[~~site~~] of the activity;

(b) Name of the person responsible for coordinating and implementing the activity;

(c) Purpose, documentation of planning, learner outcomes, faculty, teaching, and evaluation methods;

(d) Method of verification of participant attendance; [~~Participant roster, with a minimum of:~~

~~1. Name and signature; and~~

~~2. License number;~~]

(e) Participant roster including the participant's name, license number, and signature or similar electronic verification;

(f) Summary of participant evaluations; and

(g)[~~(f)~~] Number of continuing education contact hours awarded:

1. Contact hours shall be calculated by taking the total number of minutes that the participants will be engaged in the learning activities, excluding breaks, and divide by fifty (50); and

2. Partial hours shall be permissible[~~after one (1) contact hour is earned~~];

(h)[~~(g)~~] Master copy of certificate of completion awarded; and

(i)[~~(h)~~] Identification of required instructional materials and references.

(16) Participants shall receive a certificate of completion that documents participation with the following information:

(a) Name of participant;

(b) Offering title, date, and the format of presentation [~~location~~];

(c) The provider's name, address, telephone number, approval number, and expiration date of the providership;

(d) Name and signature of authorized provider representative; and

(e) Number of continuing education contact hours awarded.

(17) There shall be a clearly defined method for evaluating the continuing education activity, which shall include:

(a) An evaluation tool that includes participant appraisal of achievement of each outcome, teaching effectiveness of each presenter, relevance of content to expected outcomes, effectiveness of teaching methods, and appropriateness of the format of presentation [~~physical facilities~~]; and

(b) A mechanism for periodic, systematic evaluation of the provider's total program of educational activities.

(18) There shall be a summary of the participants' evaluations for each continuing education activity with an action plan with time lines for resolution of identified deficiencies.

(19) The provider shall have current policies and procedures for the management of the providership that demonstrate compliance with the required standards.

(20) For an offering that includes clinical practice, the instructor-student ratio for the clinical experience shall not exceed one (1) to ten (10).

(21) The following constitute in-service education and shall not be considered as a continuing education activity for purposes of this administrative regulation:

(a) An activity that is part of an employing agency's staff development program designed to provide information related to the work setting;

(b) On the job training;

(c) Orientation;

(d) Basic cardiopulmonary resuscitation; and

(e) Equipment demonstration.

Section 5. (1) The following forms are incorporated by reference:

(a) "Application for Continuing Education Provider Approval", [~~1/2017~~] 10/2021, Kentucky Board of Nursing; and

(b) "Application for Continuing Education Provider Renewal", [~~1/2017~~] 10/2021, 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. This material is also available on the board's Web site at https://kbn.ky.gov/General/Pages/Document-Library.aspx.

JESSICA WILSON, President

APPROVED BY AGENCY: October 28, 2021

FILED WITH LRC: November 5, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, January 24, 2022, at 10:00 a.m. (EDT) 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 by Monday, January 17, 2022, 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. EDT) Monday, January 31, 2022. 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: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, cell (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey R. Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements to obtain approval from the Kentucky Board of Nursing to be a continuing education (CE) provider.

(b) The necessity of this administrative regulation: This regulation is necessary because of KRS 314.073.

(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 for the approval of continuing education providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effected administration of statutes setting standards for continuing education providership.

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

(a) How the amendment will change the existing administrative regulation: The amendment updates the current regulation: to allow for applications to be submitted to the Board in electronic format; to require a method for verification of participant online attendance for courses; and to require that certificates indicate the format of the course presentation. Furthermore, it updates the material incorporated by reference: applications for continuing education provider approval and renewal.

(b) The necessity of the amendment to the administrative regulation: To accommodate developments in methods, such as videoconferencing, for providers to present continuing education courses.

(c) How the amendment conforms to the content of the authorizing statutes: By clearly stating the requirements.

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes: Continuing education providers will be informed regarding the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nursing continuing education providers, the Board currently has approved approximately 165 continuing education providers.

(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: Continuing education

providers will have to be able to have a method for verifying online participants and maintain a roster of the participants.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: There is no estimated cost.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: The costs for the additional compliance should be a nominal increase.

(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 are no additional costs on a continuing basis.

(6) Provide 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 or amendment: No increase needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established.

(9) TIERING: Is tiering applied? Tiering was not applied. All changes are applied across continuing education providers.

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 314.073, 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 costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Nursing
(Amendment)

201 KAR 20:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.011(5), (9), 314.111(1), (2), (3), 314.131(2)

STATUTORY AUTHORITY: KRS 314.111, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 requires the board to review schools, approve qualified schools, and, if appropriate, withdraw approval for schools of nursing. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 314.This administrative regulation establishes the standards for the development and approval of programs that prepare graduates for admission to the licensure examination and to facilitate endorsement of licensure status to other states.

Section 1. Definition. "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse.

Section 2. Establishment of a Program of Nursing. (1) The governing institution may receive consultation from the board prior to establishing a program of nursing.

(2) The governing institution that desires to establish and conduct the program of nursing shall be accredited as established in 201 KAR 20:260, Section 2.

(3) The governing institution shall consider each campus as a separate program of nursing.

Section 3. Letter of Intent. (1) The governing institution shall submit to the board a letter of intent to establish a prelicensure program of nursing and the fee required by 201 KAR 20:240.

(2) The letter of intent shall be completed under the direction or consultation of a registered nurse who meets the qualifications of a program administrator as established in 201 KAR 20:310.

(3) The letter of intent shall include:

(a) Approval from the governing body of the institution proposing the program of nursing or other empowered approval bodies as applicable;

(b) The results of a feasibility study that includes the following information related to the need for the program of nursing:

1. Nursing workforce supply and demand data from the past year for the area within a fifty (50) mile radius and projected supply and demand; and

2. A description of the applicant pool that is being targeted and how this population will be reached;

(c) Evidence that an introductory letter has been sent to all program of nursing administrators within a fifty (50) mile radius;

(d) Documentation from cooperating healthcare agencies within a fifty (50) mile radius that they will provide support for the creation of the program of nursing. This documentation shall include evidence of the agencies' intention to contribute to the achievement of the clinical objectives of the program;

(e) General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, and institutional faculty qualifications and resources;

(f) A timeline for the hiring of a full time program administrator, admission of students, and projected graduation of the first class;

(g) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the proposed program of nursing;

(h) A copy of the curriculum vitae of the registered nurse involved in the planning; and

(i) Description and rationale for the proposed type of program of nursing, including the establishment of an enrollment baseline as required by 201 KAR 20:260, Section 3(1).

(4)(a) If concerns are raised about the need for the program or about the ability of the program to obtain appropriate clinical sites, a hearing shall be held before the board's education committee to act upon the letter of intent.

(b) At the conclusion of the hearing, the committee shall recommend to the board whether or not to approve the letter of intent.

(c) If the letter of intent is approved by the board, the governing institution shall be notified in writing that it may move to the proposal phase. The governing institution shall appoint a qualified program administrator and provide appropriate resources, consultants, and faculty to develop the proposed program plan. The proposal shall be submitted within one (1) year of the date of the approval of the letter of intent or the letter of intent shall expire.

Section 4. Proposal Phase. (1) A completed program proposal

shall be submitted to the board by the governing institution for approval.

(2) The program shall not be announced, advertised, or students admitted to the program of nursing until the proposal has been approved and developmental status has been granted by the board.

(3) The program proposal shall include:

(a) Philosophy, mission, and learning outcomes of the governing institution;

(b) An organizational chart of the governing institution and written plan, which describes the organization of the program of nursing and its relationship to the institution;

(c) Proposed philosophy, mission, and learning outcomes for the proposed program;

(d) Curriculum design including proposed courses, description, sequence and credit hours delineating those credits assigned to theory and clinical;

(e) Student recruitment plan and the enrollment baseline as set out in 201 KAR 20:260, Section 3(1);

(f) A five (5) year plan for recruiting and retaining qualified nurse faculty;

(g) A proposed job description for the program administrator reflecting authority and responsibility;

(h) A description of faculty offices, classrooms, clinical skills laboratory, library facilities, conference rooms, and learning resources;

(i) A description of support services for students, to include provision of health services or evidence of an emergency plan for care, academic advisement, student services, mechanism for obtaining learning resources, and financial aid;

(j) Availability and willingness of accredited agencies to provide clinical experiences across the curriculum. This information shall include the:

1. A list of clinical agencies and hours available for clinical experience;

2. Number of students each agency can accept;

3. Clinical experience that will be available from each agency;

4. Other nursing programs that utilize this agency; and

5. Plan to avoid displacement of students from existing programs;

(k) Policies and procedures for student admission to the program of nursing and progression, including the plan to retain students so as to maintain a low attrition rate;

(l) Availability of clerical assistance and support staff as set out in 201 KAR 20:260, Section 2(6);

(m) A general plan for an on-going, research based planning and evaluation process that incorporates a systematic review of the program that results in continuing improvement; and

(n) A description of financial resources to support the program including a budget for the first three (3) years with projected revenues and expenditures and the amount of resources going to institutions or organizations for contractual or support services.

(4) The program of nursing may meet with the board staff to clarify, verify, and amplify materials included in the program proposal.

(5) The governing institution shall be notified in writing of action taken by the board on the proposal.

(a) If the board determines that all requirements have been met, the program shall be granted developmental status.

(b) The board, in collaboration with the program, shall determine an opening date.

Section 5. Developmental Status. (1) Students may be admitted after developmental status is granted.

(2) Employment of program administrator and faculty.

(a) The program administrator shall be the first faculty member employed, and shall have assumed full time responsibilities for the program prior to opening.

(b) The faculty as established in 201 KAR 20:310 shall be employed in sufficient numbers to prepare for the development of the curriculum component of the program.

(3) Any deviation from the initial curriculum plan approved within the proposal shall be approved by the board before the first class begins course requirements.

(4) Written contracts for use of clinical facilities shall be executed prior to admission to the first nursing course.

(5) The program of nursing shall submit semi-annual progress and evaluation reports or other reports as requested by the board to demonstrate implementation of the approved proposal until the first class graduates.

(6) Site visits shall be conducted by the board as necessary.

(7) Developmental status may be withdrawn if:

(a) A proposed program does not comply with 201 KAR 20:260 through 360;

(b) A class is not enrolled within eighteen (18) months of the date the board granted developmental status; or

(c) The governing institution fails to submit board required reports within the designated time period.

(8) The governing institution shall be notified in writing of the intent to withdraw developmental status. The governing institution may request reconsideration by the board. The request shall be in writing and sent no more than thirty (30) days from the date of the notification.

Section 6. Initial Status and Program Approval. (1) The status of the program shall move automatically from developmental status to initial status upon admission of the first class.

(2) It shall be the responsibility of the program of nursing to notify the board of the admission of the first class.

(3) The program shall notify the board in writing thirty (30) days prior to the graduation of the first class.

(4) Eligibility for program approval occurs after the graduation of the first class. Within sixty (60) days after graduation of the first class, the faculty shall submit a written report that:

(a) Evaluates the implementation of the program of nursing compared to the approved proposal; and

(b) Addresses compliance with the standards set by 201 KAR 20:260 through 360.

(5) The decision to grant or deny program approval shall be based on review of the report submitted by the program of nursing and a site visit report by a representative of the board.

(6) If program approval is denied, the applicant may request a hearing pursuant to KRS Chapter 13B.

Section 7. Initial Status and National Nursing Accrediting Body. (1) A program of nursing shall obtain and maintain accreditation by a national nursing accrediting body recognized by the United States Department of Education.

(2) The program of nursing that has been approved for initial status by the board shall submit evidence that it has applied for accreditation. Evidence shall be submitted within ninety (90) days of achieving initial status.

(3) The program of nursing shall submit a copy of all correspondence to and from the national nursing accrediting body to the board within thirty (30) days.

(4) The program of nursing shall obtain candidacy status from a national nursing accrediting body within three (3) years of achieving initial status. The program of nursing shall obtain full accreditation from a national nursing accrediting body within four (4) years of achieving initial status.

(5) A program of nursing that fails to obtain or maintain accreditation from a national nursing accrediting body may have its approval withdrawn by the board pursuant to 201 KAR 20:360, Section 7.

JESSICA WILSON, President

APPROVED BY AGENCY: October 28, 2021

FILED WITH LRC: November 5, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, January 24, 2022, at 10:00 a.m. (EDT) 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 by Monday, January 17, 2022, 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. EDT) Monday, January 31, 2022. 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: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, cell (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey R. Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets the standards for programs of nursing applying for approval.

(b) The necessity of this administrative regulation: It is required by KRS 314.111.

(c) How 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: By setting standards.

(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: It will require all programs of nursing applying for approval to become accredited by a national nursing accrediting body.

(b) The necessity of the amendment to the administrative regulation: National accrediting bodies for professional education set national standards for those schools, such as medicine, pharmacy, dentistry, etc. The schools must adhere to the standards so that their graduates may apply for licensure in that profession. Nursing has historically taken a different approach. Generally, each state board of nursing approves schools of nursing in order that they may operate. Each state sets its own standards. National accreditation has been voluntary; however, the current trend is to require national accreditation. Accreditation supplements the information evaluated by the Board of Nursing. Ultimately, the Board is responsible for the regulation and approval of each prelicensure program of nursing. The accrediting body oversees the program's adherence to its standards.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.111 requires the Board to set standards. The Board has decided that all programs of nursing shall become accredited.

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes: By requiring accreditation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, 37 of 80 approved prelicensure nursing programs in the state of Kentucky are accredited through one of the three nursing accrediting bodies. This total does not take into account those programs granted developmental or initial status.

(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: A program of nursing applying for approval will have to obtain accreditation from a national nursing accrediting body. Currently, there are three such organizations: Accreditation Commission for Education in Nursing (ACEN), Commission for Nursing Education Accreditation *CNEA), and Commission on Collegiate Nursing Education (CCNE). The program of nursing will have to apply to one of them.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The cost varies for each organization, the following numbers are as of March, 2021. ACEN's application requires a candidacy fee of $2,500, and a one-time accreditation fee of $1,000; CNEA requires a fee of $3,280 for a one applicant program, and $7,890 for institutional campuses; and CCNE has a $2,500 fee for a one-degree program, and a $4,000 for two-degree programs.

Accreditation candidacy requires site visits: ACEN's site visits cost are $2,475; CNEA has a site visit fee for 1-2 programs of $6,815; and CCNE has a site visit cost of $ 1,750, per team member (which may comprise 3-5 individuals).

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will meet the regulatory requirements. Accreditation plays a role in assuring through peer review and continuous improvement. The Board's focus is public safety by following established regulatory guidelines. National nursing accreditors focus on program excellence.

(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) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: It will not.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It 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 314.111, 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 costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Nursing
(Amendment)

201 KAR 20:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs.

RELATES TO: KRS 314.111
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.111 requires nursing programs to be approved by the board. This administrative regulation establishes evaluative standards to assure that the programs of nursing provide the necessary instruction and services to prepare graduates for licensure eligibility [~~as registered~~] nurses or as practical nurses.

Section 1. Program of Nursing Accredited by a National Nursing Accrediting Body. (1)(a) A prelicensure registered nursing or licensed practical nursing program that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall be deemed to be in compliance with the standards of 201 KAR 20:260 through 360 [~~and shall not have to demonstrate compliance every eight (8) years as required by Section 2 of this administrative regulation~~]. The accredited program shall comply with Sections 3 through 10 of this administrative regulation.

(b) The board shall retain jurisdiction over accredited programs and may conduct site visits or other investigations into any allegation that may constitute a violation of 201 KAR 20: 260 through 201 KAR 20:360. The board may also conduct site visits in accordance with Section 5 of this administrative regulation or when a national nursing accreditation board visits the program.

(2) A prelicensure program of nursing that is accredited by a national nursing accrediting body recognized by the United States Department of Education shall submit all correspondence and reports to and from the accrediting body to the board within thirty (30) days of submission or receipt.

Section 2. Programs of Nursing Not Accredited by a National Nursing Accrediting Body. (1) A program of nursing that is not accredited by a national nursing accrediting body on the effective date of this administrative regulation shall obtain candidacy status with a national nursing accrediting body within three (3) years and shall obtain full accreditation within four (4) years of the effective date of this administrative regulation.

(2) A program of nursing that is not accredited by a national nursing accrediting body on the effective date of this administrative regulation shall submit a copy of all correspondence and reports to and from the national nursing accrediting body within thirty (30) days of submission or receipt.

(3) A program of nursing that does not obtain or maintain accreditation from a national nursing accrediting body may have its approval withdrawn by the board pursuant to section 7 of this administrative regulation. [~~A prelicensure registered nursing or licensed practical nursing program that is not accredited by a national nursing accrediting body recognized by the United States Department of Education shall be required to demonstrate compliance with 201 KAR 20:260 through 201 KAR 20:360 at least every eight (8) years for continued approval.~~

~~(2)(a) A site visit shall be conducted at least every eight (8) years.~~

~~(b) A specific list of information required for review shall be sent by the board to the program of nursing prior to the site visit.~~

~~(3) Prior to the site visit, the program of nursing shall submit:~~

~~(a) A self-evaluation report that provides evidence of compliance with 201 KAR 20:260 through 201 KAR 20:360; and~~

~~(b) Other related information as requested by the board.~~]

Section 3. Reports and Evaluation. (1) A program of nursing shall submit the Annual Report of the Program of Nursing to the board regarding its compliance with 201 KAR 20:260 through 201 KAR 20:360. It shall also submit the benchmarks set out in Section 5(2)(f) of this administrative regulation.

(2) To verify continued compliance with 201 KAR 20:260 through 201 KAR 20:360, the program of nursing shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other related documents as requested by the board.

(3) Pursuant to 201 KAR 20:260, Section 2(7)(a), the faculty shall engage in an evidence based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation report that is submitted to the board.

(4) Data collection for the evaluation report shall be on-going and shall reflect aggregate analysis and trending.

(5) The evaluation report shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program:

(a) Organization and administration of the program of nursing;
(b) Curriculum;
(c) Resources, facilities, and services;
(d) Teaching and learning methods including distance education;
(e) Faculty evaluation;
(f) Student achievement of program outcomes;
(g) Graduation rates;
(h) Licensure examination pass rates;
(i) Employment rates of graduates; and
(j) Clinical resources, including laboratory and simulation.

(6) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to ensure that the distance education program is substantially comparable to a campus based program.

(7) The evaluation report shall provide evidence that the outcomes of the evaluation process are used to improve the quality and strength of the program.

Section 4. Benchmarks. The board shall utilize the following benchmarks to evaluate a program of nursing. Except for the pass rate, the benchmarks shall be calculated annually from July 1 to June 30. The board shall calculate the pass rate for a program of nursing on an annual basis from January 1 to December 31 for all first time takers of the NCLEX.

(1) The pass rate for first time takers of the NCLEX who tested within twelve (12) months of the program completion date as reported on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates incorporated by reference in 201 KAR 20:070;

(2) The faculty turnover rate. A faculty member whose employment ends on or before June 30 of any year shall be counted in that year's calculation;

(3) The program administrator turnover rate;
(4) The graduation rate;
(5) The faculty grievance rate; and
(6) The student grievance rate.

Section 5. Site Visits. (1) The board may conduct site visits at any time.

(2) The following situations may be cause for a site visit to determine if the standards of 201 KAR 20:260 through 201 KAR 20:360 are being met:

(a) Denial, withdrawal, or change of status by a national nursing accrediting agency;
(b) Providing false or misleading information to students or the public concerning the program;
(c) A written complaint received from faculty, students, or the general public relating to a violation of 201 KAR 20:260 through 201 KAR 20:360;
(d) A change in physical facilities;
(e) Information received by the board that may indicate a violation of 201 KAR 20:260 through 201 KAR 20:360;

(f) A change in any of the benchmarks listed in Section 4 of this administrative regulation as follows:

1. A pass rate as calculated by Section 4 of this administrative regulation that:

a. Is less than an average of eighty (80) percent for three (3) consecutive years; or

b. Varies above and below eighty (80) percent from year to year over the previous five (5) years;

2. A faculty turnover rate greater than thirty (30) percent for two (2) consecutive years;

3. A program administrator turnover rate of more than three (3) individuals in five (5) years;

4. A graduation rate of less than sixty (60) percent of the original admitted cohort of newly-enrolled students within the maximum time frame allowed for completion. The maximum time frame shall be determined by multiplying the standard program length for normally progressing students by 1.5. Calculation of the graduation rate shall include students who are enrolled for the first time in the first nursing course of the nursing program curriculum. All students admitted within the original cohort shall be included in the calculation regardless of whether a student may be excluded from the calculation utilized by a national nursing accrediting body;

5. Twenty-five (25) percent or more of the total number of nursing faculty who file grievances or appeals that are substantiated; or

6. Substantiated student grievances and appeals of more than ten (10) percent of the student population enrolled in the nursing program each year; or

(g) Failure to submit reports as required by 201 KAR 20:260 through 201 KAR 20:360.

(3) A program of nursing that fails to meet one (1) or more benchmarks for a year shall submit a report that examines the factors that contributed to the failure to meet and shall provide a description of the corrective measures to be implemented.

(4)(a) The board shall annually compile information on how the programs of nursing met the benchmarks. This information shall be published on the board's Web site.

(b) A program of nursing shall post a link to the information compiled pursuant to paragraph (a) of this subsection on the program of nursing's Web site. The link shall be easy to locate on the program's home page.

Section 6. Action Following Site Visit. (1)(a) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(b) The program administrator shall be available during the discussion of the report at the board committee to provide clarification.

(c) If the site visit results in a finding of non-compliance with 201 KAR 20:260 through 201 KAR 20:360 by the program of nursing, a letter shall be sent to the program administrator regarding any requirements to be met.

(d) The board shall notify the program of nursing of the time frame within which it shall meet the requirements. The board shall verify that the requirements have been met.

(2)(a) If the program of nursing is unable to meet the requirements in the time set by the board, it may request additional time. The board, in its discretion, may grant or deny this request based on the rationale for the request.

(b) If the board denies the request for additional time, it shall begin the process established in Section 7 of this administrative regulation.

Section 7. Withdrawal of Approval. (1) If, in the opinion of the board, the standards established by 201 KAR 20:260 through 201 KAR 20:360 are not being met, the board shall send notice to the program administrator of the affected program of nursing of its intent to withdraw approval. The notice shall be sent return receipt requested.

(2) When making this determination, the board shall consider the following factors:

(a) The number and severity of the deficiencies;

(b) The length of time in which the deficiencies have existed; and

(c) Any exigent circumstances.

(3) Within thirty (30) days of receipt of the notice, the program administrator of the affected program may request an administrative hearing pursuant to KRS Chapter 13B. If an administrative hearing is not requested, program approval shall be withdrawn and the program shall be closed. A closed program shall comply with subsection (5) of this section.

(4)(a) If a program of nursing requests an administrative hearing, that hearing shall be held within sixty (60) days of the request.

(b) The hearing shall be held before a hearing officer or before the full board.

(5)(a) A program of nursing whose approval has been withdrawn by the board shall be removed from the official approved status listing upon the effective date of the decision. Students currently enrolled in the last semester or quarter of the program may complete the program. If the student graduates, he or she may apply for licensure and make take the licensure examination. Any other student shall not be allowed to apply for licensure or take the licensure examination, unless the student graduates from another approved program of nursing.

(b) The program of nursing that has been closed shall assist a currently enrolled student to transfer to an approved program of nursing.

Section 8. Voluntary Closure of a Program.

(1) A governing institution seeking to close a program of nursing shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) A governing institution may choose one (1) of the following procedures for closing a program of nursing as established in paragraph (a) or (b) of this subsection.

(a) The governing institution shall continue the program of nursing until the last class enrolled has graduated.

1. The program shall continue to meet the standards until all students enrolled in nursing courses have graduated or transferred.

2. The official closing of the program shall be the date on the degree, certificate, or diploma of the last graduate.

3. The governing institution shall notify the board in writing of the official closing date.

(b) The governing institution shall close the program following the transfer of students to other approved programs.

1. The program shall continue to meet the standards until all students have transferred.

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the governing institution.

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records.

(a) The governing institution that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The governing institution that ceases to exist shall transfer the academic transcript of each student and graduate to a third party vendor approved by the Council for Postsecondary Education for safekeeping.

Section 9. Change in Ownership or Organization of the Governing institution. (1) The governing institution shall notify the board in writing of any intent to transfer administrative authority or ownership. The new administrative authority or owner shall inform the board of its plans for immediate and future operation.

(2) The board shall conduct a site visit to ensure adherence by the program of nursing to 201 KAR 20:260 through 201 KAR 20:360.

(3) Following this site visit, approval of the program of nursing shall continue under the new ownership or administrative authority if the approval standards continue to be met.

Section 10. Incorporation by Reference. (1) "Annual Report of the Program of Nursing", 10/18, Kentucky Board of Nursing, is incorporated by reference.

(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. This material is also available on the board's Web site at https://kbn.ky.gov/General/Pages/Document-Library.aspx.

JESSICA WILSON, President

APPROVED BY AGENCY: October 28, 2021

FILED WITH LRC: November 5, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, January 24, 2022, at 10:00 a.m. (EDT) 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 by Monday, January 17, 2022, 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. EDT) Monday, January 31, 2022. 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: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, cell (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey R. Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for continued approval of programs of nursing.

(b) The necessity of this administrative regulation: It is required by KRS 314.111.

(c) How 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: By setting standards.

(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: It will require all approved programs of nursing that are not currently accredited by a national nursing accrediting body to obtain accreditation within four years.

(b) The necessity of the amendment to the administrative regulation: National accrediting bodies for professional education set national standards for those schools, such as medicine, pharmacy, dentistry, etc. The schools must adhere to the standards so that their graduates may apply for licensure in that profession. Nursing has historically taken a different approach. Generally, each state board of nursing approves schools of nursing in order that they may operate. Each state sets its own standards. National accreditation has been voluntary. However, the current trend is to require national accreditation. This relieves some of the responsibility of the Board of Nursing. The Board is still ultimately responsible for the operation of the school. However, the accrediting body oversees that the schools adhere to the standards.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 314.111 requires the Board to set standards. The Board has decided that all programs of nursing shall become accredited.

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes: By requiring accreditation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approved program of nursing that are not currently accredited, currently, there are 37 out of 80 approved pre-licensure nursing programs in the state of Kentucky are accredited through one of the three nursing accrediting bodies. This total does not take into account those programs granted developmental or initial status.

(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: A program of nursing will have to maintain accreditation from a national nursing accrediting body. Currently, there are three such organizations: Accreditation Commission for Education in Nursing (ACEN), Commission for Nursing Education Accreditation (CNEA), and Commission on Collegiate Nursing Education (CCNE). The program of nursing will have to be accredited by one of them.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The cost varies for each organization. However, the following numbers are as of March, 2021. ACEN's annual fee is $2,396 for the initial year, plus $1,200 for additional programs and has an annual fee of $2,875; CNEA has an annual fee for one program of $2,775; and CCNE has an annual fee of $2,777, which increases 2% per year. Accreditation requires site visits: ACEN's site visits cost are $2,475; CNEA has a site visit fee for 1-2 programs of $6,815; and CCNE has a site visit cost of $ 1,750, per team member, which may comprise 3-5 individuals.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will meet the regulatory requirements. Accreditation plays a role in assuring through peer review and continuous improvement. The Board's focus is public safety by following established regulatory guidelines. National nursing accreditors focus on program excellence.

(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) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: It will not.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: it 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 314.111, 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 costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Nursing
(Amendment)

201 KAR 20:480. Licensure of graduates of foreign nursing schools.

RELATES TO: KRS 314.041, 314.051

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 and 314.991. KRS 314.041 and[~~to~~] 314.051 authorize the board to issue a license to a graduate of a foreign nursing school. This administrative regulation establishes the requirements for the licensure of graduates of foreign nursing schools.

Section 1. [~~Applicants for Licensure by Examination.~~] (1)(a) An applicant for licensure by examination who is a graduate of a foreign nursing school shall meet the requirements of 201 KAR 20:070, Section 1, except for Section 1(3) of that administrative regulation.

(b) An applicant for licensure by endorsement who is a graduate of a foreign nursing school shall meet the requirements of 201 KAR 20:110.

(2) If licensed in another country evidence shall be submitted by the applicant or an organization on behalf of the applicant that the license has not been revoked, suspended, probated, or otherwise disciplined in the licensing country.

(3) An applicant shall maintain proof of legal permanent or temporary residency under the laws and regulations of the United States.

(4)(a) An applicant for licensure as a registered nursing or a licensed practical nurse shall obtain a full education course-by-course report from the Commission on Graduates of Foreign Nursing Schools (CGFNS) Credentials Evaluation Service. [~~nurse shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.~~

~~(b) An applicant for licensure as a licensed practical nurse shall obtain a letter issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools, stating that the requirements of the VisaScreen Certificate have been met.~~] The report shall state whether the applicant's program of nursing is comparable to an approved program in the state.

(b) An applicant shall also complete an English Language Proficiency examination pursuant to Section 2 of this administrative regulation.

(5) An applicant for licensure by examination may be made eligible to take the NCLEX examination prior to obtaining a Social Security number. However, the applicant shall not be licensed until the applicant [~~he~~] provides a Social Security number.

Section 2. English Language Proficiency Examinations.

(1) An applicant for licensure shall complete English Language Proficiency examination unless the language of instruction and the textbooks of the applicant's program of nursing were entirely in English.

(2) The following English Language Proficiency examinations are recognized with the minimum passing standard:

(a) International English Language Testing System (IELTS), 6.5 overall, 6.0 speaking; and

(b) Test of English as a Foreign Language (TOEFL), eighty-four (84) overall, twenty-six (26) speaking.

(3) The applicant shall cause the scores on the English Language Proficiency examination to be sent to the board by CGFNS. [~~Applicants for Licensure by Endorsement. (1) An applicant for licensure by endorsement who is a graduate of a foreign nursing school shall meet the requirements established in 201 KAR 20:110.~~

~~(2) A graduate of a foreign nursing school who is not a citizen of the United States shall maintain evidence of legal permanent or temporary residency in the United States.~~

~~(3)(a) An applicant for licensure as a registered nurse shall obtain a VisaScreen Certificate issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools.~~

~~(b) An applicant for licensure as a licensed practical nurse shall obtain a letter issued by the International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools, stating that the requirements of the VisaScreen have been met.~~]

JESSICA WILSON, President

APPROVED BY AGENCY: October 28, 2021

FILED WITH LRC: November 5, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, January 24, 2022, at 10:00 a.m. (EDT) 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 by Monday, January 17, 2022, 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. EDT) Monday, January 31, 2022. 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: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, cell (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey R. Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets certain requirements for applicants for licensure who graduated from a foreign nursing school.

(b) The necessity of this administrative regulation: It is necessary to assure that the foreign nursing program is comparable to a Kentucky program and that the applicant can speak, read, and understand English.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting these requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting these requirements.

(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: It replaces the requirement of obtaining a VisaScreen with a Commission on Graduates of Foreign Nursing Schools Credentials Evaluation Service (CGFNS CES) report. The VisaScreen does not determine the comparability of the foreign nursing program; the CGFNS CES does. In addition, the accepted English Language Proficiency examinations and the passing scores are listed.

(b) The necessity of the amendment to the administrative regulation: Since the VisaScreen is no longer a useful tool, there must be an evaluative tool to be used by the Board. The CGFNS is such a tool. Also since the VisaScreen will no longer be used, it is necessary to list the English Language Proficiency examinations that are acceptable.

(c) How the amendment conforms to the content of the authorizing statutes: By adopting the CGFNS CES and the English examinations.

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes: By adopting the CGFNS CES and the English examinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for licensure who graduated from a foreign nursing school, number unknown.

(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 obtain a CGFNS CES report and pass an English Language Proficiency examination.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: There is a fee paid to CGFNS and to the organization providing the English Language Proficiency examination. Board staff understands that the CGFNS CES report cost to be $385.00; and the costs to take the ELP examinations are as follows: the Test of English as a Foreign Language (TOEFL) examination is $185.00, and the International English Language Testing System (IELTS) is $225.00.

(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 regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: It will not.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It 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 314.041, KRS 314.051, 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 costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:115. Definition of psychological testing.

RELATES TO: KRS 319.010

STATUTORY AUTHORITY: KRS 319.032(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish and define the scope of practice within the field of psychology. This administrative regulation establishes parameters of psychological testing.

Section 1. Definition. "Psychological testing" means the use of one (1) or more standardized measurement instruments, devices, or procedures including the use of computerized psychological tests, to observe or record human behavior, and which require the application of appropriate normative data for interpretation or classification and includes the use of standardized instruments for the purpose of the diagnosis and treatment of mental and emotional disorders and disabilities, the evaluation or assessment of cognitive and intellectual abilities, personality and emotional states and traits, and neuropsychological functioning.

Section 2. Psychological Tests. Psychological tests may include a version or reformulation:

(1) Individual tests for the evaluation of cognitive and intellectual abilities, examples of which are:

(a) The Wechsler intelligence scales;

(b) The Stanford-Binet intelligence scales; and

(c) The Kaufman Assessment Battery for Children;

(2) Individual, objective, and projective tests of personality and emotional states and traits, examples of which are:

(a) The Minnesota Multiphasic Personality Inventory;

(b) The Millon Clinical Multiaxial Inventory;

(c) The Millon Adolescent Clinical Inventory; and

(d) Projective techniques including:

1. The Rorschach Ink Blots;

2. Thematic Apperception Test; and

3. The Holtzman Ink Blots; and

(3) Individual tests of neuropsychological functioning, examples of which are:

(a) The Halstead-Reitan Battery;

(b) The Luria-Nebraska Battery;

(c) The Lezak or Kaplan Battery; and

(d) The NEPSY (A Developmental Neuropsychological Assessment).

Section 3. Services that are described as "psychological testing" shall only be administered and interpreted by persons

credentialed by this board or who meet the formal academic training and experience qualifications established in KRS Chapter 319 and these administrative regulations and who are otherwise exempt by statute.

(1) Persons credentialed by this board, as well as other licensed or certified professionals, may also use tests of language, education, and achievement, as well as tests of abilities, interests, and aptitudes. With the exception of the test categories and psychological tests listed in Section 2 of this administrative regulation, the use of these other tests is not exclusively within the scope of this administrative regulation.

(2) Persons not credentialed by this board shall not train or supervise any person in performing psychological testing.

(3) [~~The practice of psychology shall be construed within the meaning of the definition contained in KRS 319.010(7) without regard to whether payment is received for services rendered.~~

~~(4)~~] Services that are described as "psychological testing" shall be administered to minor children only upon the notification of and the granting of written permission by the parent or legal guardian(s), unless otherwise required by the courts subject to specific state or federal law.

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSt2ZU5RY3VmZz09

Password: 889205

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 931924

Find local AT&T Numbers:

https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=8888227517&accessCode=931924

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 893 0708 2752

Password: 889205

SIP: 89307082752@zoomcrc.com

Password: 889205

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. EST on January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 3I9, regulating the practice of psychology. This administrative regulation establishes the parameters for psychological testing.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the parameters for psychological testing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by setting forth the parameters of psychological testing.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: None, it just clarifies a definition.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation allows psychologists to have an updated definition.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:125. Health service provider designation.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: KRS 319.032(2), 319.050(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(7) requires that the designation of "health service provider" shall be required for a licensed psychologist who supervises a psychological health care service. KRS 319.032(2) authorizes the board to promulgate administrative regulations necessary to administer KRS Chapter 319. This administrative regulation establishes the requirements for the granting of that designation.

Section 1. (1) The designation "health service provider" shall refer to a licensed psychologist who is authorized under KRS 319.050(7) and this administrative regulation to clinically supervise a certified psychologist, [~~licensed psychological practitioner,~~] temporarily licensed psychologist, licensed psychological associate, temporary licensed psychological associate, licensed psychologist, [~~or~~] a graduate-level psychology student in providing psychological health care services or any credential holder under discipline.

(2)(a) Except as provided by paragraph (b) of this subsection, a licensed psychologist who does not have the designation "health service provider" shall not clinically supervise psychological health care services.

(b) A temporarily licensed psychologist or a licensed psychologist may provide concurrent clinical supervision to graduate students while under clinical supervision of a psychologist with a health service provider designation.

Section 2. Psychological health care services shall include delivery of diagnosis, assessment, psychotherapy, treatment, or other therapeutic services to individuals, couples, families, or groups whose growth, adjustment, or functioning is impaired or who otherwise seek psycho-logical health care services.

Section 3. (1) A health service provider shall be a licensed psychologist who has completed appropriate training and clinically supervised experience in psychological health service delivery at the doctoral level. The training and experience may occur in a variety of psychological health care delivery sites. The training and supervised experience shall include:

(a) 1,800 hours of clinically supervised experience as established in subsection (2) of this section; or

(b) Certification as established in subsection (3) of this section.

(2) 1,800 Hours of Clinically Supervised Experience.

(a) The 1,800 hours of clinically supervised experience shall be within one (1) or more health care settings in which the licensed psychologist delivered direct psychological health care services, pursuant to Section 2 of this administrative regulation, in addition to the 3,600 supervised experience hours required for licensure as a li-censed psychologist under 201 KAR 26:190.

(b) The clinical supervision shall be provided by a licensed psychologist with the health service provider designation approved by the board and shall consist of one (1) hour of individual supervision each week.

(3) Certification. The licensed psychologist shall:

(a)1. Hold a Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB) or a successor organization;

2. Be board-certified by the American Board of Professional Psychology (ABPP) or a successor organization; or

3. Hold a Certificate from the National Register of Health Service Providers in Psychology or a successor organization;

(b) Have a minimum equivalent of five (5) years of full time practice at the independent practice level; and

(c) Have had no disciplinary action taken by a licensure board or on record in the ASPPB data base.

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSt2ZU5RY3VmZz09

Password: 889205

Or Telephone:
Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 931924

Find local AT&T Numbers: https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=8888227517&accessCode=931924

Or an H.323/SIP room system:
H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 893 0708 2752
Password: 889205

SIP: 89307082752@zoomcrc.com
Password: 889205

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. EST on January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 3I9, regulating the practice of psychology. This administrative regulation establishes the requirements for the granting of that designation.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the requirements for the granting of that designation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds temporarily licensed individuals and associates to the definition of health services provider.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: None, this amendment just expands the definition of health services provider.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: More individuals can be designated as a health services providers.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue for the Board.

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:130. Grievances and administrative complaints.

RELATES TO: KRS 319.005, 319.032, 319.082, 319.118, 319.990

STATUTORY AUTHORITY: KRS 319.032(1)(k)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(k) requires the board to promulgate administrative regulations that establish the procedure for investigating complaints or suspected violations of KRS Chapter 319 and notifying proper law enforcement authorities. KRS 319.005 prohibits unlicensed persons from engaging in the practice of psychology or using the title of psychologist, licensed psychologist, certified psychologist, licensed psychological practitioner, or licensed psychological associate. KRS 319.082 delineates the causes for which disciplinary action may be taken against a credential holder. KRS 319.118 authorizes the board to institute and maintain actions to restrain or enjoin violations of applicable statutes, administrative regulations, and orders of the board. KRS 319.990 sets forth the criminal penalty for violations and authorizes prosecution of violators. KRS 319.032 authorizes the board to develop guidelines for use in complaints involving alleged sexual misconduct by a licensed holder, and for training of investigators in these matters. This administrative regulation is established to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of administrative complaints asserted against credential holders or applicants for licenses.

Section 1. Definitions. (1) "Administrative complaint" means a formal administrative pleading authorized by the board that sets forth charges against a credential holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(2) "Board" is defined in KRS 319.010(2), and for purposes of this administrative regulation, shall also mean a hearing panel.

(3) "Charge" means a specific allegation contained in any document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or 201 KAR Chapter 26.

(4) "Grievance" means any allegation alleging misconduct by a licensed holder or applicant or alleging that an unlicensed person is engaging in the practice of psychology or using the title of psychologist.

(5) "Order" means the whole or any part of a final disposition of a hearing.

(6) "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency.

(7) "Respondent" means the person against whom a grievance or administrative complaint has been made.

Section 2. Grievance. (1) Source. A grievance may be initiated by:

(a) The board;

(b) The public; or

(c) Any governmental agency.

(2) Form.

(a) A grievance shall:

1. Be in writing through use of hard copy or digital forms provided by the board;

2. Clearly identify the licensee against whom the grievance is being made;

3. Contain the date the grievance is initiated;

4. Clearly identify the complainant through printed name, contact information, and signature;

5. Contain a clear and concise statement of the facts giving rise to the grievance, including the relationship of the complainant to the licensee;

6. Indicate if the grievance arises out of a court-involved evaluation, consultation, treatment, or psychoeducation of a person;

7. Provide consent, or a means of acquiring consent, from the legal guardian for investigations involving minors or adults under guardianship; and

8. Provide a waiver of confidentiality for the complainant and the complainant's minor children or wards, if applicable.

(b) A certified copy of a court record for a misdemeanor or felony conviction relating to the practice of psychology shall be considered a valid grievance.

(c) The board shall not accept or process anonymous grievances or administrative complaints.

(3) A grievance shall be filed with the board at its designated office or place of business, or by e-mail.

(4) Response. The board shall provide a copy of the grievance to the respondent in a timely manner along with additional information and documents supplied by the complainant throughout the administrative process.

(5) The respondent shall have twenty (20) days to file with the board a written response to the grievance.

(6) Initial review of the grievance by the complaint screening committee:

(a) All grievances shall be assigned an identification number and be referred to as such to ensure anonymity.

(b) At the next subsequent regularly-scheduled meeting of the board's designated complaint screening committee, or as soon thereafter as practicable, the complaint screening board or a panel committee of the board shall review the grievance and response as well as determine if the matter is within the board's jurisdiction. At that time, and if all necessary information for decision making is available, the complaint screening committee may recommend:

1. Dismissal of the grievance if the complaint screening committee determines there is no evidence of a violation of law or ethics as provided by the statutes or administrative regulations pertaining to the practice of psychology; if it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the complaint screening committee shall notify the complainant and the respondent that no further action shall be taken at the present time.

2. Investigation;

3 Tabling the decision to allow for acquisition of additionally requested information, which may include a fitness for duty evaluation;

4. Referral of the grievance to the full board for further review and action; or

5. Issuing a voluntary assurance of compliance to unlicensed individuals whom engage in the practice of psychology.

(7) Investigation. The board shall provide investigators to explore the ethical and professional conduct of respondents related to the filing of grievances.

(a) The investigator shall review the factors and variables within the grievance that are pertinent to the practice of psychology and consider the circumstances for which the board's review is

required.

(b) The respondent shall be contacted by the investigator or board administrator to begin the investigation. With the consent of the respondent, a meeting may be scheduled at which time the respondent may further respond to the allegations of the grievance. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(c)[~~(b)~~]1. If the grievance pertains to a minor or any person under legal guardianship as a consumer, collateral, or participant of the investigation, the investigator shall acquire consent from all-involved legal guardians of the minor or ward prior to proceeding with the investigation, unless otherwise ordered by a court of law.

2. If the grievance arises out of a court-involved evaluation, treatment, or psychoeducation of a person whereby the respondent's engagement was affiliated with a legal action, the investigator shall secure information from all involved parties, as well as judicial officers and other involved professionals, concerning the role of the respondent and the purpose and scope of the respondent's court-affiliation. The investigator shall also secure information from opposing parties and other stakeholders in the legal process when assessing the role of the respondent in legal proceedings and how the role is related to the grievance.

3. Investigators shall consider information from multiple data-gathering methods to increase accuracy and objectivity.

4. Investigators shall strive to use a balanced and fair process of investigation through collection of valid collateral source information that demonstrates sufficiency and reliability.

5. In the investigation of the grievance, the investigator shall review all data provided from both the complainant and the respondent as well as answer to all requested information from the board.

6. Investigators shall perform reasonable inquiry when confronted with information about a possible violation of law or ethics; however, the scope of the investigation shall be delineated by grievance.

7. Investigators shall be free from multiple relationships and conflicts of interest prior to acceptance and through completion of the investigation.

8. If the investigator is a member of the board, the investigating member shall not vote on disposition of the grievance.

9. Investigators shall complete the investigation in less than sixty (60) days from the respondent's final interview. If an extension is needed, the investigator shall inform the complaints screening committee of the reason for the extension as well as an estimated date of completion in fourteen (14) day intervals.

(8) Report of investigation. Upon the completion of the investigation, the person or persons making the investigation shall submit a written report to the[~~board~~] complaints screening committee containing a succinct statement of the facts disclosed or discovered by the investigation. The investigator shall also acknowledge incomplete, unreliable, or missing data.

(9) After consideration of the grievance and investigative report by the complaint screening committee, the committee may consider the options in paragraph (6)b of this section. If referred to the board, the board shall determine, with the weight it sees fit, if there has been a prima facie violation of KRS 319.082 based on consideration of the:

(a) Grievance;

(b) Response;

(c) Investigative report, if an investigation was warranted; and

(d) Fitness for duty examination, if an examination was warranted

(10) If it is determined that the facts alleged in the grievance or investigative report do not constitute a prima facie violation, the board shall notify the person making the grievance and the respondent that no further action shall be taken at the present time.

(11) If it is determined that there is a prima facie violation, the board shall:

(a) Issue an administrative complaint against the credential holder or applicant;

(b) File suit to enjoin the violator; or

(c) Seek criminal prosecution pursuant to KRS 319.990.

Section 3. Administrative Complaint. If the board determines that the grievance shall be made an administrative complaint, the administrative complaint shall be adjudicated pursuant to KRS Chapter 13B.

Section 4. Administrative Response. Within twenty (20) days of service of the formal administrative complaint, the respondent shall file with the board a written response to the specific allegations set forth in the administrative complaint. Allegations not properly responded to shall be deemed admitted, and may form the basis for a default adjudication against the respondent subject to the administrative complaint if the requisite elements of a violation are admitted. The board may, for good cause, permit the late filing of a response.

Section 5. Allegations of Sexual Misconduct by a License Holder. (1) To assure confidentiality for the complainant, the alleged victim's name shall not be used in any written document. This individual shall be identified by initials only or by some other mechanism for identification adopted by the board.

(2) Upon request, the testimony of the alleged victim may be taken by deposition in order to assure his or her confidentiality.

(3) To protect the confidentiality of all parties, the board may issue an order restraining all parties and their representatives, including counsel, from any discussion or release of information about the allegations outside of the investigative and hearing processes.

(4) In accordance with the provisions of KRS 319.032(1)(d), the board may hold some or all of the hearing procedures in closed session.

Section 6. Fitness for Duty Examination. (1) If there is reasonable cause to believe that a credential holder or applicant for a license is physically or mentally incapable of practicing psychology with reasonable skill and safety to clients, the board may order the credential holder or applicant to submit to an examination by a psychologist or other health care provider designated by the board to determine the credential holder's or applicant's fitness and competence to practice psychology.

(2) The expense of this examination shall be borne by the board.

(3) The board shall then consider the findings and conclusion of the examination.

(4) The board shall provide a copy of the examination to the respondent. The respondent may file with the board a written response to the examination within fifteen (15) days of the date on which the findings and conclusion of the examination was provided to the respondent.

(5)(a) Based on consideration of the psychological or physical examination, the board shall determine if there has been a prima facie violation of KRS 319.082.

(b) If it is determined that the findings and conclusion of the examination do not constitute a prima facie violation of KRS 319.082, the board shall notify the respondent and complainant, if any.

(c) If it is determined that there is a prima facie violation of KRS 319.082, the board shall issue an administrative complaint against the credential holder or applicant.

Section 7. Board Member Training for Cases of Sexual Misconduct. (1) Within six (6) months of their appointment, all board members and investigators shall undergo specialized training to cover the content specified by KRS 319.032(1)(e).

(2) An investigator shall not be assigned to cases where sexual misconduct has been alleged until the required training has been completed.

(3) Training shall consist of a three (3) hour course that includes the content specified by KRS 319.032(1)(e) and may be delivered by means of either live presentation, individual tutorial, or electronic media.

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:
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CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 3I9, regulating the practice of psychology. This administrative regulation provides procedures for filing, evaluating, and disposing of administrative complaints asserted against credential holders or applicants for licenses.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation provides procedures for filing, evaluating, and disposing of administrative complaints asserted against credential holders or applicants for licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects some misnumbering.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will provide updated procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision..

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This amendment corrects misnumbering.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

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

increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:155. Licensed psychologist: application procedures and temporary license.

RELATES TO: KRS 319.050

STATUTORY AUTHORITY: 319.032(1) (a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychologist. This administrative regulation establishes the requirements for applicants for licensure, and the conditions for a temporary license.

Section 1. Application. (1) After the requirements established in KRS 319.050(2) are met, an application for a credential as a licensed psychologist or a temporarily licensed psychologist may be submitted to the board, to an online application management system contracted by the board for the purposes of application screening, or as the board directs.

(2) The application made to the board or to the online application management system shall include:

(a) A certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of their knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification.

(b) Payment of the application fee, which shall be:

1. Made payable to the Kentucky State Treasurer if the application is processed through the board; or

2. Made to the online application management system as directed by the board.

(c) Three (3) recommendations from persons qualified to evaluate the applicant's professional ability within five (5) years from the date of application, including two (2) persons who have received a doctorate in psychology (Ph.D., PsyD., Ed.D.). The recommendations shall be submitted on the Recommendation Form for Licensure as a Psychologist; and

(d) An official transcript for all levels of education required for licensure. Transcripts shall be received in sealed envelopes or electronically directly from the school or a third-party clearinghouse.

Section 2. Temporary Licensure. (1) Pending successful completion of required examinations, an applicant may request permission to practice psychology at the doctoral level on a temporary basis pursuant to KRS 319.050(3). The request for a temporary credential shall be cosigned by the candidate and the proposed supervisor, who shall be a licensed psychologist with health service provider certification approved by the board.

(2) Supervision during the period of temporary licensure shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(3) A report of supervision shall be submitted on a regular basis as required by 201 KAR 26:171, Section 6.

(4) The candidate shall take the national EPPP within one (1) year of the board's written approval of temporary licensure.

(5)(a) A temporary license shall be valid for one (1) year from the date of the notice of approval by the board.

(b) During the period of temporary licensure, a candidate shall:

1. Successfully complete all credentials and examination procedures;

2. Pass the EPPP; and

3. Pass the Kentucky examinations as outlined in 201 KAR 26:230, Section 1(2), within one (1) year of the date of the notice of approval by the board for a temporary license.

(6)(a) Under exceptional circumstances and upon written request cosigned by the board approved supervisor, the board may approve an extension of the period of temporary licensure.

(b) If a temporary licensee requires an extension after one (1) year, the licensee may request a six (6) month extension.

(c) After the six (6) months, a second extension may be requested for an additional six (6) months.

(d) After a total of two (2) years of temporary licensure, the licensee may request a second temporary license following the steps in this section.

(e) If after two (2) years on the second temporary license another extension is requested, the licensee may request a third temporary license following the steps in this section.

(f) Licensees shall not exceed a total of six (6) years of extensions for all temporary licenses nor hold a temporary license for longer than six (6) years.

(g) All extensions are provided by the board at the board's discretion.

(h) A licensee shall submit a completed Request for Extension of Temporary Licensure as a Psychologist to request an extension.

Section 3. (1) An individual who submits an Application for Licensure as a Psychologist and has been approved by another state to take the EPPP shall submit:

(a) The official notice of the results of the EPPP from the state psychology regulatory board that approved the applicant to take the EPPP; or

(b) A request to ASPPB to release the results of the EPPP to the board and notify the board of the submission of the request.

(2) The applicant shall submit the official notice or notification of the request to ASPPB to the board within thirty (30) days of taking the examination.

Section 4. Grace Period for Submission of Credentials. To allow for processing of the candidate's materials by the board, there shall be a grace period not to exceed sixty (60) days within which candidates who have completed their degree requirements

may begin to practice psychology under supervision of a board-approved supervisor, as established in 201 KAR 26:190.

(1) Upon acceptance of employment or the beginning of the required period of supervision, the candidate and the licensed psychologist who shall serve as his or her supervisor shall immediately submit a letter of notice to the board indicating that he or she has begun to practice in Kentucky and that application materials are forthcoming. Failure to submit this notice shall be deemed as grounds for disciplinary action against the candidate and the supervisor.

(2) The candidate shall ensure that all materials are forwarded to the board within thirty (30) days from the date of employment or supervision. Once the application is complete, the board shall review the material at its next scheduled meeting and, if appropriate, issue either a temporary or permanent credential. If the candidate does not meet the requirements for the credential, or if the application material is insufficient to take any action, he or she shall be notified by the board and directed to cease practice until the requirements are met or the necessary documentation has been submitted.

(3) The grace period shall not be extended beyond sixty (60) days. Candidates who fail to achieve approval within this timeframe shall not practice psychology until credentialed by the board.

(4) Upon filing the notice set forth in Section 3(1) of this administrative regulation, the candidate is deemed to be practicing psychology under the jurisdiction of the board, and shall comply with KRS Chapter 319 and 201 KAR Chapter 26.

Section 5. Incomplete Application. An incomplete application shall be determined to be expired one (1) year from the date of filing, and may be destroyed.

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

(a) "Application for Licensure as a Psychologist", October[~~March~~] 2021;

(b) "Recommendation Form for Licensure as a Psychologist", March 2021; and

(c) "Request for Extension of Temporary Licensure as a Psychologist", March 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Examiners of Psychology, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the Board's Web site and the address is: https://psy.ky.gov[~~Web site~~].

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSt2ZU5RY3VmZz09

Password: 889205

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 931924

Find local AT&T Numbers:

https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=8888227517&accessCode=931924

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 893 0708 2752

Password: 889205

SIP: 89307082752@zoomcrc.com

Password: 889205

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. EST on January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 3I9, regulating the practice of psychology. This administrative regulation establishes the fees for licensure and examination.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the fees for licensure and examination.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the

authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist remaining current with their training.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will provide updated procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision..

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision..

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:160. Fee schedule.

RELATES TO: KRS 319.050(2)(a), 319.064(2)(a), 319.071(1)

STATUTORY AUTHORITY: KRS 319.032(1)(n), 319.071(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(2)(a) and 319.064(1)(a) require an applicant to pay a fee for applying for licensure. KRS 319.071(1) requires a credential holder to pay a renewal fee established by the board. KRS 319.032(1)(n) requires the board to promulgate administrative regulations increasing or decreasing the fees for an applicant or credential holder as the board deems necessary. This administrative regulation establishes the application and renewal fees for credential holders.

Section 1. (1) Except as provided in subsection (3) of this section, an applicant for licensure as a psychologist shall pay the following:

(a) A $100 application review fee;

(b) The fee for taking the EPPP, which shall be paid directly to the ASPPB examination contractor; and

(c) A $100 fee for taking the jurisprudence and competency examinations[~~structured oral examination~~].

(2) Except as provided in subsection (3) of this section, an applicant for licensure as a psychological associate shall pay the following: (a) A $100 application review fee; and

(b) The fee for taking the EPPP, which shall be paid directly to the ASPPB examination contractor;

(3) The examination fee established in subsection (1)(b) or (2)(b) of this section shall be waived if a candidate has:

(a) Previously taken the EPPP in another state; and

(b) Achieved a score which would be considered as passing in Kentucky.

(4) Upon successful completion of the application and examination processes, the initial licensure fees shall be as follows:

(a) An applicant for licensure as a psychologist or psychological practitioner shall pay $250 for the first three (3) year period;

(b) An applicant for licensure as a psychological associate shall pay $200 for the first three (3) year period.

(5) Every three (3) years a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall pay to the board a renewal fee of $450.

(6) Every three (3) years a certified psychologist or licensed psychological associate shall pay to the board a renewal fee of $300.

Section 2. The late renewal fee for late renewal during the three (3) month period shall be seventy-five (75) dollars.

Section 3. The reinstatement fee for licensure shall be $100.

Section 4. The fee for registration as a nonresident psychologist shall be $100.

Section 5. (1) If the applicant fails the Examination for Professional Practice in Psychology (EPPP) and applies to retake this examination, the applicant shall submit the examination fee as established by the ASPPB examination contractor directly to the contractor.

(2) If the applicant fails either the jurisprudence or competency examination[~~structured oral examination~~] and applies to retake the[~~this~~] examination, the fee shall be fifty (50) dollars for each attempt.

Section 6. An application for licensure by reciprocity shall be accompanied by a fee of $100.

Section 7. All fees required by this administrative regulation shall be nonrefundable.

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

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69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

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Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. EST on January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for licensure and examination.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032(1) authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations regulating the practice of psychology. This administrative regulation establishes the fees for licensure and examination.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish fees.

(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 only updates the name of the examinations required.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the name of the examinations required.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, and anyone seeking to obtain a license.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: There are no actions required by licensed entities to comply with the amendment to this regulation. It only updates the name of the required examinations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation will add no additional cost to licensed entities.

(c) As a result of compliance, what benefits will accrue to the entities: The licensed entities will know the correct name of the required examinations.

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

(a) Initially: This administrative regulation does not create a

cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding are necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:175. Continuing education.

RELATES TO: KRS 210.366, 319.032(1)(f), 319.050, 319.053, 319.064, 319.071

STATUTORY AUTHORITY: KRS 319.032(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for continuing education as a condition for renewal of a license. This administrative regulation establishes the continuing education requirements for renewal of a license.

Section 1. Definitions. (1) "Continuing education" means participation in an approved program of professional education beyond the basic educational requirements that meets the requirements established in Section 2(1) of this administrative regulation.

(2) "Continuing education hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. (1) Each credential holder shall document the completion of at least thirty-nine (39) continuing education hours approved by the board pursuant to this administrative regulation within each three (3) year renewal period.

(2) A[a] credential holder shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management within the first year of licensure and every six (6) years thereafter as required by KRS 210.366.

(a) A credential holder shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management for the credential holder's first six (6) years of licensure if the credential holder completes a three (3) semester hour graduate course in suicide and crisis assessment, prevention, and intervention during the course of the credential holder's graduate education.

(b) A credential holder shall be exempted from the requirement to complete a continuing education course in suicide assessment, treatment, and management from the six (6) year continuing education if, during the six (6) year period, the credential holder:

1. Is primarily employed in a clinical setting accredited by the Joint Commission or another nationally accrediting healthcare entity that requires the completion of a suicide risk assessment with each patient being seen within the setting;

2. Teaches a graduate-level psychology course in suicide assessment, training, and management; or

3. Teaches a continuing education course in suicide assessment, training, and management at least once during the six (6) year period.

(c) The continuing education course in suicide assessment, treatment, and management shall be approved in accordance with Section 5 of this administrative regulation.

(3) The continuing education shall:

(a) Provide specific content planned and evaluated to improve the credential holder's professional competence;

(b) Make possible the acquisition of new skills and knowledge required to maintain competence;

(c) Strengthen the habits of critical inquiry and balanced judgment; and

(d) Include a minimum of three (3) hours in either ethical practice or risk management with each three (3) year renewal period.

(4)(a) Except as provided in paragraph (b) of this subsection, a licensed psychologist with the health service provider designation who provides supervision to an applicant for licensure, or a certified psychologist or a licensed psychological associate shall include as part of the thirty-nine (39) hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques for each three (3) year renewal period.

(b) The requirement established in paragraph (a) of this subsection shall begin with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received.

Section 3. (1) Hours required to satisfy the continuing education requirement shall be completed prior to the renewal date of a license.

(2) The credential holder shall:

(a) Maintain and provide adequate records including certificates of attendance and documentation of completion of the required continuing education hours; or

(b) Provide documentation through a board-approved registry, which shall certify the name and license number of the license holder, date and title of each program and the number of hours earned, and confirmation that the programs were given by a board-approved provider.

Section 4. Only continuing education activities approved by the board shall be accepted toward the continuing education requirements for renewal of a license.

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) Participation in a continuing education program that is approved, offered, or sponsored by an organization listed in this subsection shall be accepted toward the requirement for continuing education established in Section 2(1) of this administrative regulation:

(a) An affiliated state chapter of the American Psychological Association, American Medical Association, American Psychiatric Association, or National Association of Social Workers;

(b) A recognized state, regional, national, or international psychological association;

(c) A state or provincial psychology licensure board; and

(d) A course for graduate-level academic credit in psychology or psychiatry offered by a national, regional, or state accredited academic institution.

(2)(a) The board may approve an organization that is not listed in subsection (1) of this section as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a completed Continuing Education Sponsorship Application;

2. Pays an initial application fee of $250; and

3. Proposes to sponsor continuing education programs that meet the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a $150 renewal fee annually.

(d) A workshop in psychology or psychiatry offered by a national, regional, or state accredited academic institution's medical center or affiliated hospital shall comply with paragraph (a)1 of this subsection. The fees required under paragraphs (a)2 and (c) of this subsection are waived.

(3)(a) The board may approve a specific continuing education program that is not approved, offered, or sponsored by an organization listed in subsection (1) of this section or an approved organization under subsection (2) of this section if the sponsor or a participant of the program:

1. Files a completed Continuing Education Program Application at least thirty (30) days before the program. The failure to abide by this deadline may be a reason for denial of the application;

2. Pays an application fee of fifty (50) dollars; and

3. Provides information about a continuing education program that it proposes to sponsor which meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the sponsor to offer the program one (1) time. The sponsor shall submit a request for renewal and a ten (10) dollar renewal fee for each subsequent request to offer the same approved program.

Section 6. (1) A continuing education program that satisfies the requirements for license renewal shall be:

(a) Approved, offered, or sponsored by an organization that has been approved by the board; or

(b) A specific program approved by the board;

(2)(a) Have a clearly stated[~~clearly- stated~~] purpose and defined content area; and

(b) Be consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) Have a presenter who is a professional qualified in the defined content area;

(4) Clearly state the program's time. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) Include attendance recorded by the program's sponsor;

(6) Documentation of completion shall be provided to the participant only after approval is granted; and

(7) Include each participant's evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn continuing education hours pursuant to paragraphs (a) and (b) of this subsection.

(a) Each one (1) hour semester course shall be the equivalent of fifteen (15) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(b) Each one (1) hour quarter course shall be the equivalent of nine (9) continuing education hours for the purposes of meeting the requirements of this administrative regulation.

(2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:

(a) Earn six (6) continuing education hours for teaching the course; and

(b) Not receive:

1. Credit more than once for teaching a particular course during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(3) A person who teaches an approved continuing education workshop or program shall:

(a) Earn continuing education hours on a one (1) to one (1) basis; and

(b) Not receive:

1. Credit more than once for teaching a particular workshop or program during a renewal period; and

2. More than nine (9) total continuing education hours for these teaching activities.

(4) A person who completes home study or internet-based courses approved, offered, or sponsored by an organization listed in Section 5(1) shall not receive:

(a) Credit for repeating a specific study course during a renewal period; and

(b) More than twelve (12) total continuing education hours through home study or internet-based courses in a renewal period.

(5) A person who participates in videoconferencing in an interactive setting shall:

(a) Earn one (1) continuing education hour for each clock hour of participation; and

(b) Not receive more than twenty-four (24) continuing education hours through interactive videoconferencing participation.

Section 8. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 2 of this administrative regulation into the immediately following renewal period.

Section 9. The board shall audit a minimum of ten (10) percent of all credential holders' documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

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

(a) "Continuing Education Program Application", October 2021[~~2016~~]; and

(b) "Continuing Education Sponsorship Application", October 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street[~~911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the board's Web site and the address is: https://psy.ky.gov.

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:
Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSt2ZU5RY3VmZz09

Password: 889205

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Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. EST on January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for renewal of a license.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032(1)(f).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the continuing education requirements for renewal of a license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statute by establishing the continuing education requirements for renewal of a license.

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

(a) How the amendment will change this existing administrative regulation: The amendment requires that an application for continuing education be received at least 30 days before the program of instruction and that a certificate cannot be sent to an attendee until the program is approved by the board.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update procedures for applying for approval of continuing education programs.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 319.032(1)(f) authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations establishing the requirements for continuing education.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish requirements for continuing education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will have to submit requests for approval of continuing education programs at least 30 days prior to the presentation of the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to licensed entities.

(c) As a result of compliance, what benefits will accrue to the entities: The Board will have adequate time to approve continuing education programs before they are presented.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding are necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this

administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:185. Requirements for granting licensure as a psychologist to an applicant licensed in another state.

RELATES TO: KRS 319.032(1) (a), (i), 319.050(2)

STATUTORY AUTHORITY: KRS 319.032(1) (i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1) (a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure. KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing reciprocal agreements with other states. This administrative regulation establishes the requirements for granting a license to an applicant who is licensed in another state that does not have an agreement of reciprocity with this board.

Section 1. (1) The board shall consider an applicant for licensure in psychology in Kentucky who:

(a) Is licensed in another state that does not have an agreement of reciprocity with the Kentucky Board of Examiners of Psychology;

(b) Holds a current valid license or certificate, in good standing, to practice psychology that has been granted by:

1. At least one (1) state;

2. The District of Columbia;

3. A United States Territory; or

4. A Canadian province that maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards (ASPPB).

(c) Has a minimum of five (5) years of full-time practice or its equivalent as determined by the board in another[~~the other~~] jurisdiction; and

(d) Has not been disciplined by any psychology licensure board.

(2) The board shall consider if the applicant meets the requirements established in KRS 319.050(2). If an applicant for licensure does not have the supervised experience as required by KRS 319.050(2)(d), the board may determine that the applicant's practice experience is equivalent to the required supervised experience based upon the information submitted in the application.

(3) An applicant for licensure as a psychologist shall submit:

(a) A completed Application for Licensure of a Psychologist Licensed in Another State with the supplementary documentation required by this subsection to the board, to an online application management system contracted by the board for the purposes of application screening, or as the board directs;

(b) Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) persons who have received a doctorate in psychology (Ph.D. PsyD., Ed.D.);

(c) An official transcript for all levels of education required for licensure. Transcripts shall be received in sealed envelopes or electronically directly from the school or a third-party clearinghouse;

(d) A Curriculum Vitae that demonstrates five (5) years of full-time practice of psychology;

(e) To the Examination for Professional Practice in Psychology (EPPP):

1. Developed by the ASPPB examination contractor; and

2. Owned by the ASPPB.

(f) A verified computerized EPPP scaled score of 500 or greater. The board shall accept the applicant's previous examination results for the national EPPP examination if the original test scores satisfied the doctoral licensure requirement as to criterion level at the time of that examination; and

(g) Payment of the application fee, which shall be:

1. Made payable directly to the Kentucky State Treasurer if the application is processed through the board; or

2. Made to the online application management system as directed by the board.

(4) The board shall review the applicant's:

(a) Record as to complaints or hearings held in previous jurisdictions; and

(b) Professional references.

Section 2. An applicant for licensure as a psychologist shall submit to a jurisprudence examination as outlined in 201 KAR 26:230, Section 1(2).

Section 3. In addition to meeting the requirements in Section 2 of this administrative regulation, an applicant for licensure as a psychologist shall submit to a competency examination as outlined in 201 KAR[~~1~~] 26:230, Section 1(2).

Section 4. Incorporation by Reference. (1) "Application for Licensure of a Psychologist Licensed in Another State", October 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the board's Web site and the address is: https://psy.ky.gov.

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

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Password: 889205

Or Telephone:
Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
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Find local AT&T Numbers:
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149.137.68.253 (Mexico)
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Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 pm EST on January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 3I9, regulating the practice of psychology. This administrative regulation establishes the fees for licensure and examination.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the fees for licensure and examination.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist remaining current with their training.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will provide updated procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision..

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:190. Requirements for supervised professional experience.

RELATES TO: KRS 319.050, 319.053, 319.056, 319.064

STATUTORY AUTHORITY: KRS 319.032, 319.050(2)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (1)(l) require the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure and supervision. This administrative regulation establishes requirements for supervised professional experience.

Section 1. Supervisory Requirements for an Applicant for Licensure as a Psychologist. (1) The applicant for licensure as a psychologist with the authorization to provide psychological health care services shall have completed a minimum of 3,600 hours of supervised professional experience in accordance with this administrative regulation.

(2) A minimum of 1,800 hours of the supervised professional experience shall be a predoctoral[~~pre-doctoral~~] internship of 1,800 hours with at least 100 hours of supervisory sessions.

(3) The remaining 1,800 hours of supervised professional experience shall be predoctoral[~~pre-doctoral~~], postdoctoral, or a combination of pre- and post-doctoral supervised professional experience acceptable to the board based upon the requirements of Sections 2 and 3 of this administrative regulation.

(4) Supervised professional experience at the pre-internship level shall consist of practica, field placement, or other professional experiences, all of which must take place in an identifiable clinical setting with mental health clients[~~not including the beginning courses and accompanying practica in assessment and treatment techniques~~].

(5) At least fifty (50) percent of the supervised professional experience shall be in service-related activities, such as treatment, assessment, interviews, report-writing, case presentations, and consultations.

Section 2. For a person applying for licensure as a psychologist, the predoctoral[~~pre-doctoral~~] internship shall meet the following criteria:

(1) The experience shall occur within an organized training program, in contrast to supervised professional experience or on-the-job training and have a planned, programmed sequence of training experiences;

(2) The training program shall have a clearly designated staff psychologist who shall be:

(a) Responsible for the integrity and quality of the training program;

(b) Actively licensed by the Board of Examiners in Psychology; or

(c) Licensed at the doctoral level by the State Board of Examiners in the state in which the training program exists or otherwise meets the standards of applicable state law; and

(d) For school psychology doctoral internships, the responsible psychologist director may be from an affiliate agency or from the university training program.

(3) Internship supervision shall be provided by a staff member of the internship agency or by an affiliate of that agency who has clinical responsibility for the cases being supervised. At least half of the internship supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree;

(4) The internship shall provide training in a range of assessment and treatment activities conducted directly with clients seeking psychological services;

(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;

(6) The internship shall include a minimum of two (2) hours per week of regularly scheduled, formal, face-to-face individual supervision. There shall also be at least two (2) additional hours per week in learning activities such as case conferences, seminars dealing with clinical issues, and group supervision;

(7) Training shall be post-clerkship, post-practicum, and post-externship level;

(8) The internship shall have a written statement or brochure that:

(a) 1. Describes the goals and content of the internship; and

2. States clear expectations for quality and quantity of the trainee's work; and

(b) Shall be made available to prospective interns.

(9) The internship experience shall be completed within twenty-four (24) months unless an extension is approved by the board for extreme extenuating circumstances such as illness, disability, or pregnancy;

(10) The trainee shall have a title such as "intern", "resident," "fellow," or other designation of trainee status; and

(11) The internship agency, preparing institution, and intern shall have a written agreement that describes the goals and content of the internship including clearly stated expectations for the nature of experiences offered in the agency and for the quantity and quality of the work.

Section 3. Additional Required Supervisory Experience. (1) For a person applying for licensure as a psychologist to provide psychological health care services, the 1,800 hours of supervised professional experience, in addition to the internship required by KRS 319.050(2)(d), shall be a training-oriented professional experience that:

(a) May include course-related field experience and practica; and

(b) Shall take place in an identifiable clinical setting with mental health clients[~~Shall not include the beginning courses and practica in assessment and treatment techniques~~].

(2) In addition to training in a range of diagnostic and treatment activities conducted directly with clients seeking psychological services, the supervised professional experience shall consist of a planned and organized sequence of activities that includes explicit training and supervision in the following areas:

(a) Clinical skill development;

(b) Legal and regulatory issues;
(c) Ethical dilemmas and issues; and
(d) Supervisory skill development.
(3) During the 1,800 hours of supervised professional experience in addition to the predoctoral internship, the candidate shall:
(a) Be under supervision as required by 201 KAR 26:171; and
(b) Be providing psychological health care services under the supervision of a licensed psychologist or other licensed mental health professional approved by the doctoral training program who is affiliated with the training program or with the practice setting in a:
1. Health care facility or agency;
2. Regional mental health or mental retardation board;
3. School, college, or university;
4. Government agency;
5. Independent practice; or
6. Formalized postdoctoral[~~internship~~] program.
(4) The applicant and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (2) of this section.
(5) If the supervised professional experience in addition to the predoctoral internship is in an independent practice, a special application letter shall affirm:
(a) The identity of the applicant, supervisor, and employer;
(b) That the supervising licensed psychologist is not hired, employed, or engaged under contract by the applicant and shall not be terminated by the applicant;
(c) That the applicant is not an owner of the independent practice or organization, but rather serves as an employee; and
(d) That the applicant has both administrative and clinical supervision that shall be provided by the independent practice or employer.
(6) If the supervised professional experience is in a university setting, the application shall also:
(a) Be proffered by a full-time faculty member;
(b) Include a plan that contains each of the areas established in subsection (2) of this section; and
(c) Include a minimum of 400 hours of direct and indirect client involvement that:
1. Is supervised by a licensed psychologist; and
2. Includes:
a. Supervising student clinical work;
b. Diagnostic and interviewing activity that occurs within clinical research projects; or
c. Clinical work in the context of teaching psychotherapy, interviewing, or psychological testing.
(7) The board shall not grant a request for temporary licensure if the request does not contain an explicit and acceptable plan for the supervised professional experience as required by this section.

Section 4. An applicant for licensure as a psychological associate shall complete supervised professional experience consisting of course-related field experience, practica, and formal predoctoral internships adding up to a minimum of 600 supervised hours that shall meet the following criteria:
(1) The experience shall occur within an organized training program and consist of a planned, programmed sequence of training experiences;
(2) The preparing institution's psychology training program shall have a clearly[-] designated placement director who shall be responsible for the integrity and quality of the experiential component of the training program;
(3) Weekly practicum and predoctoral internship supervision shall be provided by a staff member of the placement agency, by an affiliate of that agency, or by a university faculty member. At least half of the supervision shall be provided by one (1) or more psychologists with an appropriate doctorate degree and license;
(4) Field experiences, practica, and predoctoral internships shall provide training in a range of diagnostic and treatment activities conducted directly with clients seeking psychological services;
(5) At least twenty-five (25) percent of the trainee's time shall be in direct client contact;
(6) The preparing institution shall maintain a written statement or brochure describing the goals and content of the required field experiences, practica, and predoctoral internships; and
(7) Students participating in university-sanctioned supervised professional experience shall be clearly identified to clients and payers as trainees.

Section 5. An applicant for licensure as a psychological practitioner shall complete the equivalent of five (5) full-time years of psychological practice under the direct supervision of a licensed psychologist approved by the board, consistent with the requirements of 201 KAR 26:171.
(1) For purposes of this requirement, a candidate shall complete the equivalent of five (5) full-time years of supervised professional experience from the date of initial credentialing as a psychological associate, excluding any period of temporarily licensed psychological associate. A full-time year comprises at least 1,800 hours of supervised professional experience.
(2) A school psychologist who is employed in a Kentucky school system, credentialed by the Professional Standards Board, and also credentialed as a psychological associate by this board, may contract for on-going clinical supervision in the school setting with a board-approved licensed psychologist who is neither an employee nor a contractor of the school system.
(a) The supervised professional experience shall meet the conditions of this administrative regulation and may be used by the licensed psychological associate employed by the school system to meet the requirements for application to become a licensed psychological practitioner.
(b) To fulfill the requirements of 201 KAR 26:171, there shall be an explicit written plan approved by the board between the school system, the school psychologist, and the board-approved supervisor that delineates roles and responsibilities, without restricting the ability of the school district to direct or control the activities of its employee.
(c) A person trained in school psychology, if employed by an agency other than a public school or engaged in practice outside of the school setting, shall obtain clinical supervision in the manner specified by 201 KAR 26:171.

Section 6. Incomplete Application. An incomplete application shall be denied one (1) year from the date of filing and may be destroyed.

JEAN A. DETERS, Psy. D., Board Chair
APPROVED BY AGENCY: November 8, 2021
FILED WITH LRC: November 12, 2021 at 3:50 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:
Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSt2ZU5RY3VmZz09
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Password: 889205

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. EST January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for supervised professional experience.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032(1)(l) authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations governing supervision.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration by outlining the requirements for supervision.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the requirements for internships.

(b) The necessity of the amendment to this administrative regulation: See (1)(b). (c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of individuals seeking licensure.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will provide updated procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed entities.

(c) As a result of compliance, what benefits will accrue to the entities: This amendment allows licensed entities to have an updated understanding of procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision..

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding are necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first

year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:215. Nonresident status.

RELATES TO: KRS 319.015(8), 319.082

STATUTORY AUTHORITY: KRS 319.015(8), 319.032(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the Board of Examiners of Psychology to promulgate administrative regulations to establish requirements for licensure. KRS 319.015(8) authorizes a nonresident psychologist temporarily employed in the state to render psychological services for no more than thirty (30) days every two (2) years and requires the board to establish a registration process for nonresident psychologists. This administrative regulation establishes the requirements for registering in Kentucky as a nonresident psychologist.

Section 1. A nonresident psychologist temporarily employed in the state may render psychological services immediately upon:

(1) Written notification of intent to provide psychological services in Kentucky and verification to the board that the nonresident psychologist:

(a) Holds the Interjurisdictional Practice Certificate (IPC) issued by the Association of State and Provincial Psychology Boards (ASPPB) or a successor organization;

(b) Holds the Certificate of Professional Qualification (CPQ) issued by ASPPB or a successor organization;

(c) Is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization; or

(d) Is licensed in a jurisdiction with whom this Board has established reciprocity; and

(2) Payment to the board a fee for registration as a nonresident psychologist established in 201 KAR 26:160, Section 4.

Section 2. (1) A nonresident credential holder who does not satisfy Section 1 of this administrative regulation, is temporarily employed, and seeks to practice in Kentucky shall:

(a) Submit completed Nonresident Psychological Registration Form and satisfy the requirements of Subsection (2) of this section; and

(b) Pay to the board a fee for registration as a nonresident psychologist established in 201 KAR 26:160, Section 4.

(2) Board approval shall be contingent upon:

(a) Receipt of documentation that the nonresident psychologist holds a valid license in good standing from another jurisdiction; and

(b) Confirmation that the applicant does not have a report of disciplinary action filed with the Association of State and Provincial Psychology Boards.

(3)(a) Nonresident temporary practice, pursuant to KRS 319.015(8), shall be conditionally approved by the chair of the board if:

1. The applicant for temporary practice meets the conditions for practice established by KRS 319.015(8); and

2. The applicant has registered with the board.

(b) The conditional approval shall terminate at the next regularly scheduled meeting of the board. At that meeting, the board shall determine whether to approve the temporary practice.

Section 3. A nonresident psychologist temporarily employed in the state may render psychological services no more than thirty (30) days every two (2) years with the approval of the board.

Section 4. Upon the completion of the authorized temporary employment period, the nonresident license holder shall submit a written report to the board of each date on which psychological services were rendered in this state, and the location of the site of those services.

Section 5. For purposes of this administrative regulation, the provision of psychological services on a given date, regardless of the period of time of those services, shall constitute one (1) day.

Section 6. Pursuant to KRS 319.015(8), the provisions of this administrative regulation shall:

(1) Apply to a nonresident psychologist temporarily employed in the state for a period of fewer than thirty (30) days every two (2) years; and

(2) Not be used to begin practice in Kentucky by an applicant for temporary or regular licensure pending credentials review.

Section 7. A person licensed to practice psychology in another jurisdiction may practice psychology by electronic or telephonic means in Kentucky if he or she registers with the board and receives board approval for this practice. A person seeking this approval shall follow the provisions set forth in Sections 1 through 4 of this administrative regulation.

Section 8. A person licensed to practice psychology in another jurisdiction and who is providing service in response to a declared disaster pursuant to an agreement between the American Red Cross and the American Psychological Association's Disaster Response Network may begin practice in Kentucky upon notification to the board.

Section 9. A person practicing pursuant to the provisions of KRS 319.015(8) shall be subject to the provisions of KRS 319.082 and 201 KAR 26:145.

Section 10. Incorporation by Reference. (1) "Nonresident Psychological Registration Form", October 2021~~February 2017~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street[~~911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the board's Web site and the address is: https://psy.ky.gov.

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSt2ZU5RY3VmZz09

Password: 889205

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 931924

Find local AT&T Numbers:

https://www.teleconference.att.com/servlet/glbAccess?process=1&

accessNumber=8888227517&accessCode=931924

Or an H.323/SIP room system:
H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 893 0708 2752
Password: 889205

SIP: 89307082752@zoomcrc.com
Password: 889205

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. EST on January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for registering in Kentucky as a nonresident psychologist.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for registering in Kentucky as a nonresident psychologist.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statute by informing non-resident psychologists how they can practice in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment only updates the application form.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect an unknown number of non-resident individuals who are seeking to practice in Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This amendment only dates the application for non-resident practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the individual.

(c) As a result of compliance, what benefits will accrue to the entities: Non-resident individuals seeking to practice in Kentucky will have an updated form on which to apply.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding are necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):
Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:225. Renewal and reinstatement.

RELATES TO: 319.071
STATUTORY AUTHORITY: KRS 319.032(1)(c), 319.032(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(c) requires the Board of Examiners of Psychology to promulgate an administrative regulation setting the requirements for issuing and denying an applicant for licensure. KRS 319.032(2) authorizes the board to promulgate administrative regulations as it deems necessary for the proper administration of KRS Chapter 319. This administrative regulation establishes the renewal and reinstatement processes.

Section 1. (1) To apply for renewal, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:
(a) Submit a completed Renewal Application to the board;
(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5); and
(c) Have completed thirty-nine (39) continuing education hours established in 201 KAR 26:175, Section 2(1).
(2) After the renewal date but during the three (3) month grace period, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:
(a) Submit a completed Renewal Application to the board;
(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5);
(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2; and
(d) Have completed thirty-nine (39) continuing education hours established in 201 KAR 26:175, Section 2(1).
(3) After the three (3) month grace period but less than three (3) years of cancelation, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:
(a) Submit a completed Renewal Application to the board;
(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5);
(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2;
(d) Pay to the board a reinstatement fee established in 201 KAR 26:160, Section 3; and
(e) Complete thirty-nine (39) continuing education hours obtained within the three (3) years prior to the date of application for reinstatement.
(4) After three (3) years of cancelation, a licensed psychologist, certified psychologist with autonomous functioning, or licensed psychological practitioner shall:
(a) Submit a new completed application to the board;
(b) Pay to the board the appropriate fee established in 201 KAR 26:160, Section 1; and
(c) Successfully complete the oral and structured examinations on Kentucky mental health law, ethical principles, and professional practice established in 201 KAR 26:230, Section 3(1)(b) and (4).

Section 2. (1) To apply for renewal, a certified psychologist or licensed psychological associate shall:
(a) Submit a completed Renewal Application to the board;
(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(6); and
(c) Have completed thirty-nine (39) continuing education hours established in 201 KAR 26:175, Section 2(1).
(2) After the renewal date but during the three (3) month grace period, a certified psychologist or licensed psychological associate shall:
(a) Submit a completed Renewal Application to the board;
(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(6);
(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2; and
(d) Complete thirty-nine (39) continuing education hours established in 201 KAR 26:175, Section 2(1).
(3) After the three (3) month grace period but less than three (3) years of cancelation, a certified psychologist or licensed psychological associate shall:
(a) Submit a completed Renewal Application to the board;
(b) Pay to the board the appropriate renewal fee established in 201 KAR 26:160, Section 1(5);
(c) Pay to the board a late fee established in 201 KAR 26:160, Section 2;
(d) Pay to the board a reinstatement fee established in 201 KAR 26:160, Section 3; and
(e) Complete thirty-nine (39) continuing education hours obtained within the three (3) years prior to the date of application for reinstatement.
(4) After three (3) years of cancelation, a certified psychologist or licensed psychological associate shall:
(a) Submit a new completed application to the board; and
(b) Pay to the board the appropriate fee established in 201 KAR 26:160, Section 1.

Section 3. A person who previously held a credential issued by the board and applies three (3) years or more beyond the date of cancelation shall be required to meet current initial licensure requirements.

Section 4. A credential holder may continue to practice during the grace period.

Section 5. A person shall not engage in the practice of psychology after a license has been canceled.

Section 6. Incorporation by Reference. (1) "Renewal Application", October 2021[~~March 2017~~], is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street[~~911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the Board's website and the address is: https://psy.ky.gov.

JEAN A. DETERS, Psy. D., Board Chair
APPROVED BY AGENCY: November 8, 2021
FILED WITH LRC: November 12, 2021 at 3:50 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:
Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSt2ZU5RY3VmZz09
Password: 889205

Or Telephone:
Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 931924

Find local AT&T Numbers:
https://www.teleconference.att.com/servlet/glbAccess?process=1&

accessNumber=8888227517&accessCode=931924

Or an H.323/SIP room system:
H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 893 0708 2752
Password: 889205

SIP: 89307082752@zoomcrc.com
Password: 889205

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. EST on January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the renewal and reinstatement processes.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032(1)(c).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the renewal and reinstatement processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statute by explaining how licenses can be renewed and reinstated.

(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 only updates the form.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This amendment only updates the form. No additional action is necessary on the part of the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation will add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: The entities will have an updated form to use for renewal and reinstatement.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding are necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):
Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:230. Examinations and applications.

RELATES TO: KRS 319.032(1)(a), 319.050, 319.053, 319.064
STATUTORY AUTHORITY: KRS 319.032(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) requires the board to promulgate an administrative regulation establishing the examination requirements for an applicant for licensure. KRS 319.050(1) and 319.064(2)(c), (3) require an applicant to successfully complete the required examination prior to licensure. This administrative regulation establishes the examination and application requirements.

Section 1. (1) The national examination shall be the Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) examination contractor and owned by the ASPPB.
(a) The EPPP shall be taken by computer administration.
(b) The board shall submit to the ASPPB examination contractor a list of applicants eligible to sit for the examination.
(2) The Kentucky examinations shall consist of a jurisprudence examination of Kentucky mental health law, and a competency examination of ethical principles, and professional practice.
(a) A candidate shall score at least an eighty (80) percent to pass the jurisprudence examinations.
(b) A candidate shall score a 100 percent to pass the competency examination.

Section 2. General Requirements. (1) An applicant for licensure shall:
(a) 1. Submit a completed application as required by 201 KAR 26:155, Section 1; 201 KAR 26:280, Section 1; 201 KAR 26:180, Section 2; 201 KAR 26:185, Section 2; or[~~and~~] 201 KAR 26:290, Section 1; and
2. Pay the applicable fee established in 201 KAR 26:160; or
(b) Submit the application required by subsection (1) of this section to the online application management system designated by the board that shall:
1. Include a certification by the applicant that the:
a. Information in the application is true, correct, and complete to the best of their knowledge and belief; and
b. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and
2. Be accompanied by payment of the application fee that shall:
a. Be made payable directly to the Kentucky State Treasurer if the application is processed through the board; or
b. Be made to the online application management system as directed by the board.
(2) Once the Licensed Psychologist Applicant has completed all items, including sending supplemental materials, the online application management system completes a primary source verification process then forwards the application to the board for final review.
(3) The Credentialing Committee of the Board reviews the application and determines the applicant's eligibility for licensure.
(4) The applicant shall sit for the national (EPPP) examination within one (1) year of the notice of the application being approved by the board. An applicant may sit for the national (EPPP) examination at any approved ASPPB examination contractor testing center in the United States, U.S. Territories, or Canada.
(5) If an applicant loses eligibility to sit for the national (EPPP) examination because of failure to reschedule, cancel, or appear to take the examination as stated in subsection (4) of this section:
(a) The applicant shall forfeit all fees paid; and
(b) Any temporary license issued to the applicant shall be terminated.

Section 3. Examination for Licensure as a Licensed Psychologist. (1) The applicant shall pass:
(a) The national (EPPP) examination in accordance with subsection (2) of this section; and
(b) The Kentucky examinations as outlined in Section 1(2) of this administrative regulation. The competency examination shall be administered by two (2) licensed psychologists approved by the board.
(2) The applicant shall obtain an EPPP scaled score of 500 or greater or shall have obtained a previous national EPPP passing score which satisfied the doctoral licensure requirement as to criterion level at the time of that examination. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.
(3) If an applicant for licensure as a licensed psychologist fails the national (EPPP) examination, the candidate may[~~shall~~] reapply with a detailed remediation plan, including the process by which the applicant proposes to improve his or her performance on the examination, the time proposed to be spent on remediation, and with whom the applicant proposes to study or obtain further instruction and any other information requested by the board. Upon completion of the remediation plan approved by the board, and the appropriate fee to the ASPPB examination contractor is paid, the applicant shall[~~reapply to the board, pay the appropriate fee to the ASPPB examination contractor and~~] be deemed eligible by the board to be permitted to sit again for the national (EPPP) examination.
(a) The candidate shall continue to function under the supervision of the board-approved supervisor until:
1. The national (EPPP) examination and Kentucky examinations are successfully completed; or
2. The temporary license is terminated.
(b) The applicant for licensure as a licensed psychologist shall not be scheduled for the Kentucky examinations until the national (EPPP) examination has been successfully passed and the board has determined that the requirements for supervised experience for licensure as a licensed psychologist have been met.
(4) The competency examination shall not be required for an applicant who is board-certified by the American Board of Professional Psychology (ABPP) or a successor organization or holds a current license in good standing from a jurisdiction with a reciprocity agreement with this board.
(5) If the applicant does not pass either one of the Kentucky examinations on the first attempt, the applicant may reapply with a detailed remediation plan, including the process by which the applicant proposes to improve his or her performance on the examination, the time proposed to be spent on remediation, and with whom the applicant proposes to study or obtain further instruction and any other information requested by the board. Upon completion of the remediation plan approved by the board, the applicant shall be administered a second examination.
(6) If the applicant does not pass either one of the Kentucky examinations on the second attempt, the applicant may reapply with an additional remediation plan. Upon completion of the remediation plan approved by the board, the applicant shall be administered a third examination.
(7) An applicant may only take each one of the structured examinations on three (3) occasions. If an applicant for licensure as a licensed psychologist does not pass on the third attempt, they may apply to be credentialed as a licensed psychological associate by completing an application and paying the appropriate fee, as required by 201 KAR 26:160. The board shall accept the applicant's previous examination results to satisfy the requirements for the licensed psychological associate application.

Section 4. Examination for Licensure as a Licensed Psychological Practitioner. (1) The applicant shall pass:
(a) A national (EPPP) examination unless the applicant's previous examination results for the national (EPPP) examination satisfied the doctoral licensure requirement as to criterion level at

the time of that examination; or

(b) The applicant shall obtain a computerized national (EPPP) scaled score of 500 or greater. The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(2) Pursuant to KRS 319.050(3), an applicant for licensure as a licensed psychological practitioner who has been approved to sit for the national (EPPP) examination shall continue to be supervised until all requirements for licensure as a licensed psychological practitioner have been completed.

(3) If an applicant for licensure as a licensed psychological practitioner fails to obtain a scaled score of 500 or greater on the EPPP examination, the candidate may reapply to the board, pay the appropriate fee to the ASPPB examination contractor and be permitted to sit for the national (EPPP) examination again.

(4) The applicant for licensure as a licensed psychological practitioner shall not be scheduled for the Kentucky examinations until the national (EPPP) examination has been successfully passed and the required five (5) years of supervised experience or its equivalent have been approved by the board.

(5) An applicant for licensure as a licensed psychological practitioner shall submit to a competency examination as outlined in Section 1(2) of this administrative regulation administered by an at least one (1) licensed psychologist and either a certified psychologist with autonomous functioning or a licensed psychological practitioner. The applicant for licensure as a licensed psychological practitioner shall also complete a jurisprudence examination as outlined in Section 1(2) of this administrative regulation.

(6) If the applicant does not pass either one of the Kentucky examinations on the first attempt the, the applicant may reapply with a remediation plan, including the process by which the applicant proposes to improve his or her performance on the examination, the time proposed to be spent on remediation, and how the applicant proposes to study or obtain further instruction and any other information requested by the board. Upon completion of a remediation plan approved by the board, the applicant shall be administered a second examination.

(7) If the applicant does not pass either one of the Kentucky examinations on the second attempt, the applicant may reapply with an additional remediation plan. Upon completion of a remediation plan approved by the board, the applicant shall be administered a third examination.

(8) An applicant may only take each examination three (3) times, and would have to remain as a Psychological Associate under board approved supervision if either examination is failed three (3) times.

Section 5. Examination for Licensure as a Psychological Associate. (1) The applicant shall:

(a) Obtain a national (EPPP) scaled score of 400 or greater; or

(b) Have obtained an EPPP passing score for licensure at the master's level in effect at the time of the applicant's previous national (EPPP) examination.

(c) The applicant shall be notified by the board of the score, as well as of passing or failing the examination.

(2) Pursuant to KRS 319.064(3), an applicant for licensure as a licensed psychological associate who has been approved to sit for the national (EPPP) examination and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary license.

(3) If an applicant for licensure as a psychological associate fails the national (EPPP) examination, the applicant shall:

(a) File a detailed remediation plan, cosigned by the supervisor within thirty (30) days of notice of failure; and

(b) Be eligible to retake the national (EPPP) examination upon approval of the plan by the board.[

~~Section 6. Incorporation by Reference. (1) Application for Licensure as a Psychologist, March 2021, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:
Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSt2ZU5RY3VmZz09

Password: 889205

Or Telephone:

Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 931924

Find local AT&T Numbers:
https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=8888227517&accessCode=931924

Or an H.323/SIP room system:

H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 893 0708 2752
Password: 889205

SIP: 89307082752@zoomcrc.com
Password: 889205

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. EST on January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 3I9, regulating the practice of psychology. This administrative regulation establishes the examination and application requirements.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the examination and application requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: Requires that an applicant create a remediation plan if they fail the national exam.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of individuals seeking licensure.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This amendments provides updated procedures if an applicant fails the national examination.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision..

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:250. Employment of a psychological associate, a temporarily licensed psychological associate, or a temporarily licensed psychologist.

RELATES TO: KRS 319.032(1)(b), 319.032(1)(l), 319.064(5)

STATUTORY AUTHORITY: KRS 319.032(1)(b), 319.032(1)(l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(l) requires the Board of Examiners of Psychology to promulgate an administrative regulation governing the clinical supervision and employment of a licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist. KRS 319.064(5) prohibits a licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist from practicing independently, except under the employment and clinical supervision of a board approved licensed psychologist. This administrative regulation establishes the requirements for the employment of a licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist.

Section 1. Employment of a licensed psychological associate, temporarily licensed psychological associate, or temporarily

licensed psychologist (which are licensees requiring clinical supervision) by a regional mental health or mental retardation board, college or university, or government agency shall not be considered independent practice.

Section 2. (1) A licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist may be employed in a supervisor's independent practice, if the supervisor is responsible for the direction and control of the practice of the licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist.

(2) Employees shall be paid compensation. Employees shall not be independent contractors and receive a Form 1099 for their compensation. Any independent contractor shall have an independent license.

Section 3. (1) A special application shall:

(a) Be submitted to the board by the supervisor of record and a licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist if:

1. a. The licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist is employed in an independent practice; and

b. The supervisor of record is not the employer; or

2. The employer is not an organization listed in Section 1 of this administrative regulation.

(b) Be approved by the board before the practice begins.

(c) Identify the licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist supervisor, and employer.

(d) Certify that:

1. The supervising licensed psychologist is not hired, employed, or engaged under contract by the licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist;

2. The licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist is not an owner of the independent practice or organization, but rather serves as an employee; and

3. The licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist has both administrative and clinical supervision that are provided by the independent practice or organization.

(2) The arrangement described in the application shall be approved by the board before the practice begins.

Section 4. A licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist shall not pay, hire, or employ a supervisor to provide clinical supervision in accordance with 201 KAR 26:171.

Section 5. A licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist who works as an employee for more than one (1) independent practice or organization shall obtain approval from the board for a supervisor of record for each independent practice or organization and shall comply with 201 KAR 26:171 for approval to have more than two (2) supervisors of record.

Section 6. In all communications and advertising with the public, the licensed psychological associate's, temporarily licensed psychological associate's, or temporarily licensed psychologist's relationship with the employer and the supervisor shall be clearly indicated.

Section 7. The licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist and the supervisor shall comply with the requirements for clinical supervision established in 201 KAR 26:171.

Section 8. Incorporation by Reference. (1) "Special Application", (March 2021 edition), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Examiners of Psychology, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be found on the Board's Web site, https://psy.ky.gov[~~www.psy.ky.gov~~].

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSt2ZU5RY3VmZz09

Password: 889205

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 931924

Find local AT&T Numbers: https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=8888227517&accessCode=931924

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 893 0708 2752

Password: 889205

SIP: 89307082752@zoomcrc.com

Password: 889205

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. EST on January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 3I9, regulating the practice of psychology. This administrative regulation establishes the requirements for the employment of a licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the requirements for the employment of a licensed psychological associate, temporarily licensed psychological associate, or temporarily licensed psychologist.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: This amendment specifies that the supervision must be clinical.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: None, it only clarifies that it must be clinical supervision.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for clinical supervision.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:270. Change of license status.

RELATES TO: KRS 319.053, 319.056

STATUTORY AUTHORITY: KRS 319.032(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032 requires the board to promulgate administrative regulations to enable persons licensed by this board to change their license status upon completion of additional training and experience. This administrative regulation establishes procedures to enable license holders to change their license status.

Section 1. Change of License Status to Licensed Psychologist. (1) If a person holds a license as a certified psychologist with or without autonomous functioning, as a licensed psychological practitioner or as a licensed psychological associate and later completes the educational and supervised experience requirements to apply for licensed psychologist status, a new and complete application for licensure shall be submitted with an approved application fee as required by 201 KAR 26:155 and 26:160.

(2) The board shall accept the applicant's previous examination results for the national (EPPP) examination if the original test score

satisfied the doctoral licensure requirement as to criterion level at the time of that examination.

(3) If the previous EPPP score does not satisfy the requirements of subsection (2) of this section, the applicant shall successfully complete the national (EPPP) examination as described in 201 KAR 26:230.

(4) The Kentucky[~~structured~~] examinations as outlined in 201 KAR 26:230 Section 1(2)[~~on Kentucky mental health law, ethical principles, and professional practice~~] shall be successfully completed by the applicant as described in 201 KAR 26:230, Section 4(5).

Section 2. Change of License Status to Licensed Psychological Practitioner by Certified Psychologists with Autonomous Functioning. (1) Persons holding a credential as a certified psychologist with autonomous functioning may continue to function with that title.

(2) Any certified psychologist with autonomous functioning may notify the board in writing of their choice to permanently change their title to "licensed psychological practitioner".

(3) The board shall then issue a new license with that title.

Section 3. Change of License Status to Licensed Psychological Practitioner by Certified Psychologists and Psychological Associates. (1) If a person holds a credential as a certified psychologist without autonomous functioning or as a licensed psychological associate and later completes the educational and supervised experience requirements to apply for licensed psychological practitioner status, a new and complete application for licensure shall be submitted with an approved application fee as required by 201 KAR 26:155 and 201 KAR 26:160.

(2) The board shall accept the applicant's previous examination results for the national (EPPP) examination if the original test score satisfied the doctoral licensure requirement as to criterion level at the time of that examination.

(3) If the previous EPPP score does not satisfy the requirements of Section 1(2) of this administrative regulation, the applicant shall successfully complete the national (EPPP) examination as described in 201 KAR 26:230, Section 4(5).

(4) The Kentucky[~~structured~~] examinations as outlined in 201 KAR 26:230 Section 1(2)[~~on Kentucky mental health law, ethical principles, and professional practice~~] shall be successfully completed by the applicant as described in 201 KAR 26:230, Section 4(5).

Section 4. Change of License Status to Licensed Psychological Associate by Certified Psychologists. (1) Persons holding a license as a certified psychologist may continue to function with that title.

(2) At the time of renewal of their license, any certified psychologist may notify the board in writing of their choice to permanently change their title to "licensed psychological associate".

(3) The board shall then issue a new license with that title.

Section 5. Change of License Status to Licensed Psychological Associate by Certified Psychological Associates. (1) Persons holding a license as a psychological associate shall use the title licensed psychological associate.

(2) The board shall issue a new license with that title.

JEAN A. DETERS, Psy. D., Board Chair

APPROVED BY AGENCY: November 8, 2021

FILED WITH LRC: November 12, 2021 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSt2ZU5RY3VmZz09

Password: 889205

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 931924

Find local AT&T Numbers:

https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=8888227517&accessCode=931924

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 893 0708 2752

Password: 889205

SIP: 89307082752@zoomcrc.com

Password: 889205

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until 11:59 p.m. EST on January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes the fees for licensure and examination.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the

practice of psychology. This administrative regulation establishes the fees for licensure and examination.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their psychologist remaining current with their training.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will provide updated procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision..

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision..

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Examiners of Psychology
(Amendment)

201 KAR 26:310. Telehealth and telepsychology.

RELATES TO: KRS 319.140

STATUTORY AUTHORITY: KRS 319.032(2), 319.140(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.140 requires a treating psychologist utilizing telehealth to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation protects the health and safety of the citizens of Kentucky and establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the provision of psychological services and in the provision of continuing education.

Section 1. Definitions. (1) "Client" is defined by 201 KAR 26:145, Section 3.

(2) "Telehealth" means delivery of health care-related services, by a provider who is a health care provider licensed in Kentucky, to a client[~~patient~~] through a face-to-face encounter with access to real-time interactive audio and video technology. Telehealth shall not include the delivery of services through electronic mail, text chat, facsimile, or standard audio-only telephone call and shall be delivered over a secure communications connection that complies with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. secs. 1320d to 1320d-9.

(3) "Telepsychology" means the "practice of psychology", as defined by KRS 319.010(7), be-tween the credential holder and the client[~~psychologist and the patient~~] that is provided using:

(a) Electronic communication technology; or

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

(4) "Telehealth service" means any service that is provided via telehealth and is one (1) of the following:

(a) Event;

(b) Encounter;

(c) Consultation;

(d) Visit;
(e) Remote patient monitoring;
(f) Referral; or
(g) Treatment.

Section 2. Client Requirements. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall, upon initial contact with the client:
(1) Make reasonable attempts to verify the identity of the client;
(2) Obtain alternative means of contacting the client other than electronically;
(3) Provide to the client alternative means of contacting the credential holder other than electronically;
(4) Document if the client has the necessary knowledge and skills to benefit from the type of telepsychology provided by the credential holder;
(5) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications;
(6) Inform the client in writing about:
(a) The limitations of using technology in the provision of telepsychology;
(b) Potential risks to confidentiality of information due to technology in the provision of telepsychology;
(c) Potential risks of disruption in the use of telepsychology;
(d) When and how the credential holder will respond to routine electronic messages;
(e) The circumstances in which the credential holder will use alternative communications for emergency purposes;
(f) Who else may have access to client communications with the credential holder;
(g) How communications can be directed to a specific credential holder;
(h) How the credential holder stores electronic communications from the client; and
(i) The reporting of clients required by 201 KAR 26:145, Section 7;
(7) Within forty-eight (48) hours of the telehealth service, the credential holder shall document within the client's medical record that a service was provided by telehealth, and follow all documentation requirements of the practice.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. (1) A credential holder using telehealth to deliver psychological services or who practices telepsychology shall:
(a) Limit the practice of telepsychology to the area of competence in which proficiency has been gained through education, training, and experience;
(b) Maintain current competency in the practice of telepsychology through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;
(c) Document the client's presenting problem, purpose, or diagnosis;
(d) Follow the record-keeping requirements of 201 KAR 26:145, Section 6;
(e) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data; and
(f) Document the client's written informed consent to the services being provided and the provision of those services via telehealth, including that the patient has the right to refuse telehealth consultation or services, has been informed of alternatives to telehealth services, that the client shall be entitled to receive information from the provider regarding the services rendered, that the client's information shall be protected by applicable federal and state law regarding patient confidentiality, that the client shall have the right to know the identity of all persons present at any site involved in the telehealth services, and to exclude any such person, and that the client shall have the right to be advised, and to object to, any recording of the telehealth consultation or services.
(2) The requirement of a written informed consent shall not apply to an emergency situation if the client is unable to provide informed consent and the client's legally authorized representative is not available.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using telehealth to deliver psychological services or who practices telepsychology shall comply with:
(1) State law where the credential holder is credentialed and state law regarding the practice of psychology where the client is located at the time services are rendered; and
(2) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities;

Section 5. Representation of Services and Code of Conduct. A credential holder using telehealth to deliver psychological services or who practices telepsychology:
(1) Shall not, by or on behalf of the credential holder, engage in false, misleading, or deceptive advertising of telepsychology; and
(2) Shall comply with 201 KAR 26:145.

JEAN A. DETERS, Psy. D., Board Chair
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FILED WITH LRC: November 12, 2021 at 3:50 p.m.
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Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSt2ZU5RY3VmZz09
Password: 889205

Or Telephone:
Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 931924

Find local AT&T Numbers:
https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=8888227517&accessCode=931924

Or an H.323/SIP room system:
H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 893 0708 2752
Password: 889205

SIP: 89307082752@zoomcrc.com
Password: 889205

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CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does:
KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 3I9, regulating the practice of psychology. This administrative regulation establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the provision of psychological services and in the provision of continuing education.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319.032.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation establishes procedures for preventing abuse and fraud through the use of telehealth, prevents fee-splitting through the use of telehealth, and utilizes telehealth in the provision of psychological services and in the provision of continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds a requirement that documentation of the telehealth appointment takes place within 48 hours.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The only action required by this amendment is for the practitioner to document telehealth appointments within 48 hours.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow psychologists to have an updated understanding of the telehealth requirements.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Licensure for Massage Therapy
(Amendment)

201 KAR 42:080. Programs of massage therapy instruction.

RELATES TO: KRS 309.352(2), 309.355(1), (3)[~~309.358(4)~~], 309.363(1), 309.3631

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.352(2) requires the board to define licensed health-care professionals for the supervision of massage therapy students in clinical settings. KRS 309.355(1) requires the board to administer and enforce the provisions of KRS 309.350 to 309.364. KRS 309.355(3) requires the board to promulgate administrative regulations on standards of massage therapy educational program curriculum and instructor qualifications. KRS 309.358(1)(f)[~~(4)~~] requires the board to approve massage therapy training programs. KRS 309.363 requires board approval of massage therapy programs of instruction and establishes instructor qualifications. KRS 309.3631 requires the annual renewal of certificates of good standing, documentation of program updates, personnel changes, graduation rates, and licensing examination rates, and the payment of a fee. This administrative regulation establishes the definitions of supervision and qualifying supervisors and establishes the process for issuing and renewing the Certificate of Good Standing to a program of massage therapy education.

Section 1. Definitions. (1) "Adjunctive course" means a course in a program of education that enhances the career of a massage therapist but is not massage theory, technique, or practice.

(2) "Clinic" or "clinical" means a setting in which students are provided with on-site supervision and training in the practice of massage therapy.

(3) "Clinical coordinator" means the instructor of a massage therapy course in which students are assigned to perform massage therapy sessions on non-students, on or off-campus, and who is responsible for assigning the student to a clinical setting, supervising student performance through regular consultation with the student, and evaluating student achievement of clinical course objectives.

(4) "Externship" means a course offered by an approved program that:

(a) Has a syllabus that describes objectives and evaluations; and

(b) Is over and above the six hundred (600) supervised curriculum hours required for licensure.

(5) "Other licensed healthcare professional" means a practitioner as established in KRS 309.352(9)(a) through (c), (e), and (f) who may supervise a massage therapy student in a business.

(6) "Supervision" means the process of verifying attendance, assigning work, consulting with the student, evaluating student performance, and being available for emergency assistance.

Section 2. (1) To apply for a Certificate of Good Standing, a[~~A~~] program of massage therapy instruction shall file a completed, signed, and dated Certificate of Good Standing for a Massage Therapy Training Program Initial Application Form and required documentation with the board, meeting the requirements established in KRS 309.363(1)[~~, (a), (b), and (c)~~], and pay the fee set forth in 201 KAR 42:020 Section 2(10). Documentation shall include:

(a) A copy of the current license to operate issued by the Kentucky Commission for Proprietary Education, the Council on Postsecondary Education, or their equivalent in the state in which the school is conducting classes;

(b) A curriculum statement as described in KRS 309.363(1)(b)[~~1, 2, 3, 4, and 5~~] showing clock hours for each of the required subjects;

(c) A listing of instructional staff and their qualifications, as described in KRS 309.363(1)(c)1., 2., and 3. including:

1. Documentation of current Kentucky licensure of massage instructors; and

2. A resume, curriculum vitae, or PE-11 form, which is incorporated by reference in 791 KAR 1:010, for all instructors showing the specific qualifications for teaching an adjunctive or science course;

(d) A description of the policies and procedures in place for collecting and analyzing data about the quality and effectiveness of educational programs including student progress, completion, and licensure;

(e) A copy of the program or school catalogue;

(f) Documentation of accreditations held by the program or school offering the program; and

(g) A copy of a student contract agreeing not to accept compensation for massage therapy services provided prior to licensure by the board.

(2) A school may be presumed to have met the qualifications in subsections (1)(b) and (c) of this section if it holds a current designation of "Approved School" from the National Certification Board of Therapeutic Massage and Bodywork or has the designation of "accredited" or "COMTA-endorsed curriculum" from the Council for Massage Therapy Accreditation. The designation must have been current for the time the Certificate of Good Standing is be requested.

(3) After a[~~ preliminary~~] determination is made, [~~by the board after an initial review, ~~]an applicant that has been [~~preliminarily~~]denied shall be entitled to a hearing on the denial in accordance with KRS Chapter 13B if the applicant notifies the board in writing[~~ by certified mail~~] within thirty (30) days that it desires[~~elects to take advantage of that opportunity for~~] a hearing.

Section 3. (1)(a) A Certificate of Good Standing may be renewed upon submission of the Renewal Application for a Certificate of Good Standing of a Massage Therapy Training Program[~~ Renewal Short Form or the Certificate of Good Standing for a Massage Therapy Training Program Renewal Application Long Form~~] with the information required by this administrative regulation to the board and payment of the fee set forth in 201 KAR 42:020 Section 2(11), on or before the anniversary date of issue of the certificate.

(b) The Renewal Application[~~Submission of the Certificate of Good Standing for a Massage Therapy Training Program Renewal Application Long Form~~] shall include:

1. The current complete name, address, email address, Web site, and telephone number of each location in which the massage therapy training program is provided;

2. The name and contact information of the owner;

3. Documentation of the items required in Section 2 of this administrative regulation if these have changed since the program's initial application or last renewal;

4. A statement with supporting statistics to show student completion, examination pass rates, licensure rates, and placement rates; [~~and~~]

5. A statement with supporting documentation showing proof that at least seventy (70) percent of the graduates of the program who have taken the MBLEx or other board approved examinations over the twelve (12) months prior to application have received a passing score. This statistical report from the examination company shall be computed for the twelve (12) months, which ends thirty (30) days prior to the certificate anniversary date. Failure to supply proof of meeting this standard shall be grounds for denial of a program's request for certification of good standing;[~~.~~] and

(c) [~~Submission of the Application for a Certificate of Good Standing of a Massage Therapy Training Program Renewal Short Form shall include d~~]Documentation of changes to any of the following items, if these have changed since the program's initial application or last renewal:

1. The contact information for the school;

2. The instructional staff;

3. The qualifications of an instructor;

4. The curriculum;

5. The massage therapy programs offered; or

6. The program's accreditation.

(d) [~~Each Short Form shall include u~~]Updated information on student completion, examination pass rates, licensure rates, and placement rates.

(e) Submission of documentation [~~with the Short Form~~]may include:

1. The current complete name, address, email address, Web site, and telephone number of each location in which the massage therapy training program is provided;

2. The current listing of instructional staff and their qualifications as described in KRS 309.363(1)(c)[~~1., 2., and 3.~~], with attached documentation of qualifications and Kentucky licensure of new instructors;

3. A current curriculum statement as described in KRS 309.363(1)(b)[~~1, 2, 3, 4, and 5~~];

4. A curriculum statement for new programs of massage therapy added to the school's original offering, such as an associate's degree program, if the new program may be used to meet initial qualifications for licensure;

5. A statement with supporting statistics to show student completion, examination pass rates, licensure rates, and placement rates;

6. Documentation of accreditation reviews and renewals, if held; and

7. A statement with supporting documentation showing proof that at least seventy (70) percent of the graduates of the program who have taken the MBLEx or other board approved examinations over the twelve (12) months prior to application have received a passing score. Failure to supply proof of meeting this standard shall be grounds for denial of a program's request for certification of good standing.

(2) After a [~~preliminary~~]determination is made by the board after an initial review, an applicant seeking renewal that has been[~~preliminarily~~] denied shall be entitled to a hearing on the denial in accordance with KRS Chapter 13B if the applicant notifies the board in writing by certified mail within thirty (30) days that it elects to take advantage of that opportunity for a hearing.

Section 4. Notifications to Students of Changes in Status. (1) A program of massage therapy instruction shall notify current students in writing of any changes in status of its Certificate of Good Standing from the Commonwealth of Kentucky within thirty (30 days of that change in status. The notice shall include an explanation of the specific actions taken to remedy the problem.

(2) The program of massage therapy instruction shall provide proof to the Board of this notification within ten (10) days of the notification.

Section 5. Externships and Clinicals. (1) A student completing an externship or clinical experience shall not receive compensation.

(2) Massage schools or businesses that provide any type of student massage shall conspicuously include the respective words "student massage" in all promotional materials, and shall conspicuously display a written notice in the waiting room or treatment area that services are being provided by a student.

(3) Clinical courses awarding credit hours toward the 600 hours required for licensure shall be supervised by a licensed massage therapist with at least three (3) years of experience in the practice of massage therapy and who is available for on-site consultation.

(a) Massage sessions offered as part of a student clinic shall be evaluated by the instructor, and applicable goals for improvement in areas such as customer service, technique, body mechanics, and draping shall be established according to the needs of the student.

(b) Student massage clinics shall be supervised by a massage therapy instructor in the clinic.

(c) Student clinic client records shall be maintained at the school and shall meet the record keeping requirement established in 201 KAR 42:060, Section 2(1)(f[~~d~~]) and the Standards for Documentation established in 201 KAR 42:060, Section 3. Record of payment shall be made available to the client upon request.

(4) The instructor of the externship course shall provide:

(a) Clear, written learning objectives to students and their site supervisors;

(b) Planned opportunities to discuss the externship experience at regular intervals with the student, and with the site supervisor; and

(c) A mechanism for evaluating student performance in the externship experience, presented to the student and the site supervisor at the beginning of the course.

(5) A program offering an externship course shall have a written agreement signed by the institution's representative or program director and the externship site personnel that clearly defines the responsibilities of the onsite supervisor, the clinical coordinator, and the student. An externship course shall be limited to no more than twenty (20) percent of the total program hours. The externship course, if offered, shall be completed after the primary 600 supervised curriculum hours required by KRS 309.358(1)(f)[~~(4)~~].

(6) A program offering an externship course shall have liability insurance to cover student activities within the course.

(7) Externship sites shall have a licensed massage therapist or other licensed healthcare professional onsite to be available for emergencies or consultation.

(a) Externs may accrue hours for reception, documentation, or business-related activities other than hands-on massage services while the site supervisor is off-premises.

(b) A student session at an externship site may occur with the site supervisor available by phone if the client of the session is on the staff of the externship site or is another extern, and a member of the professional staff is on premises for emergency assistance.

(8) Externship client records shall be maintained at the externship site and shall meet the record keeping requirement established in 201 KAR 42:060, Section 2(1)(d) and the Standards for Documentation established in 201 KAR 42:060, Section 3. Record of payment shall be available to the client upon request.

Section 6. (1) A program of massage therapy instruction which fails to uphold the standards set in KRS 309.363 shall notify the Board within ten (10) days of the lapse. The failure to uphold the standards, and the failure to notify the Board in a timely manner, may result in a fine and probation as determined by the Board to allow time to re-attain the standard. Graduates from the program during the period of non-compliance and the probationary period may be considered for licensure. If there is a failure to meet standards and the program's Certificate of Good Standing is revoked, the Board shall not consider graduates of the program to have met the educational requirements for licensure after the revocation.

(2) The loss of a qualified instructor shall be remedied within thirty (30) days. The use of an unqualified instructor to substitute in the program may result in revocation of the Certificate of Good Standing and a fine of fifty (50) dollars.

(3) Proof of the exam rate from the administering agency for twelve (12) months ending thirty (30) days prior to the renewal date shall be submitted with the renewal application.

(a) The first incidence of failure to maintain the required license exam pass rate for this twelve (12) month period shall result in a probationary period during which graduates of the program may still be considered by the Board for licensure.

(b) A second failure within a five (5) year period may result in revocation of the Certificate of Good Standing, and graduates of the program may no longer be considered for licensure by the Board unless they graduate from another approved program of massage therapy instruction.

(c) The Board may set a fine per violation of failure to maintain the required exam pass rate.

(4) When filing an Application for Renewal of a Certificate of Good Standing while on probation, the school shall explain in writing specific actions taken to remedy the problem.

Section 7. Sale or Other Change in Ownership. In the event the school is sold or is otherwise transferred, the school shall notify the board within thirty (30) days of transfer of the new ownership,

and provide updated information regarding the ownership structure, contact information, and any staff or curriculum changes.

Section 8.[~~Section 5.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certificate of Good Standing for a Massage Therapy Training Program Initial Application Form", November 2021[~~September 2015~~]; and

(b) [~~"Application for a Certificate of Good Standing of a Massage Therapy Training Program Renewal Short Form", September 2015; and~~

~~(c)~~] "Certificate of Good Standing for a Massage Therapy Training Program Renewal Application[~~Long Form~~]", November 2021[~~September 2015~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, Frankfort, Kentucky 40601[~~Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601~~], Monday through Friday, 8:00 a.m. to 4:30 p.m. The material is also available on the board's Web site at https://bmt.ky.gov/.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 1:00 p.m. EST on January 31, 2022, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:
Join from PC, Mac, Linux, iOS or Android:
https://us06web.zoom.us/j/89285321804?pwd=aVQxcVpzL3BwN3N4enl6M3Mxd2hvdz09

Password: 834891

Or Telephone:

Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 213515

Find local AT&T Numbers:
https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=213515

Or an H.323/SIP room system:

H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 892 8532 1804
Password: 834891

SIP: 89285321804@zoomcrc.com
Password: 834891

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 (January 24), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. EST on January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for issuing and renewing the Certificate of Good Standing to a program of massage therapy education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and clarify the requirements to obtain and renew a certificate of good standing for massage therapy instruction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(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 statues by setting forth the requirements to obtain and renew a certificate of good standing for massage therapy instruction.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the requirements to obtain and renew a certificate of good standing for massage therapy instruction.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 27 programs licensed by the Board, and an unknown number of programs not currently licensed by the Board.

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

(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 proposed administrative regulation simplifies and clarifies the requirements of obtaining a certificate of good standing from a program of massage therapy instruction.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The proposed administrative regulation simplifies and clarifies the requirements of obtaining a certificate of good standing from a program of massage therapy instruction. Filers will have to pay the fee set forth in 201 KAR 42:020 Section 2(10) and (11), and file the required application or renewal form as applicable with the documentation and information as required by this proposed administrative regulation.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): It will assist programs of massage therapy instruction in understanding the requirements to obtain a certificate of good standing.

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

(a) Initially: Unknown. Filers will have to pay the fee set forth in 201 KAR 42:020 Section 2(10) and (11), and file the required application or renewal form as applicable with the documentation and information as required by this proposed administrative regulation.

(b) On a continuing basis: Unknown. Filers will have to pay the fee set forth in 201 KAR 42:020 Section 2(10) and (11), and file the required application or renewal form as applicable with the documentation and information as required by this proposed administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost to the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: See the proposed amendments to 201 KAR 42:020 regarding fees.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Licensure for Massage Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1); KRS 309.355(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. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(Amendment)

201 KAR 43:010. Application procedures for licensure.

RELATES TO: KRS 319C.070, 319C.080(1), (2)

STATUTORY AUTHORITY: KRS 319C.060(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for licensure.

Section 1. Application Procedures. (1) An Application for Licensure as a behavior analyst [~~or assistant behavior analyst may~~]shall be submitted after the requirements established in KRS 319C.080(1)[~~and (2)~~] are met.

(2) An Application for Licensure as an assistant behavior analyst shall be submitted after the requirements established in KRS 319C.080(2) are met.

(3) The application required by subsections (1) and (2) of this section shall be made by submitting a completed Form ABA-001, Application for Licensure, to the board. The application shall include:

(a) A certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that [~~the board shall take disciplinary action in accordance with KRS 319C.070 if the application contains~~]a misrepresentation or falsification in the application is grounds for denial or revocation of the license at any time; [~~and~~]

(b) A copy of the degree obtained;[~~An official transcript for all levels of education required for licensure.~~]

(4) A check or money order payable to the Kentucky State Treasurer for the application review fee and the licensure fee as required by 201 KAR 43:030;

(5) Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(1) for applicants seeking licensure as a behavior analyst and KRS 319C.080(2) for applicants seeking licensure as an assistant behavior analyst; and

(6) Proof of completion of at least five (5) hours of training in:

(a) Adult abuse and neglect;

(b) Child abuse, neglect, and dependency; or

(c) A combination of subparagraphs (a) and (b) of this subsection. The completed proof(s) shall indicate that abuse, neglect, or dependency was explicitly covered in the training.

(7) Applicants for licensure as an assistant behavior analyst shall also submit a completed Supervisory Plan, Form ABA-002, as incorporated by reference in 201 KAR 43:050, for board approval.

(8) A licensed assistant behavior analyst may apply for licensure as a licensed behavior analyst at any time within the two (2) year licensure period after meeting the requirements established in this administrative regulation. A final Report of Supervision, Form ABA-003, as incorporated by reference in 201 KAR 43:050, shall also be submitted for board approval.

Section 2. Applications Committee. The applications committee shall consist of at least two (2) board members appointed by the chair of the board. The applications committee may be assisted by the board staff and counsel to the board. The applications committee shall:[~~Licensure of Behavior Analysts. The applicant for licensure as a behavior analyst shall submit~~]:

(1) Review applications for licensure including renewals and reinstatements;[~~A check or money order payable to the Kentucky State Treasurer for the application review fee and the licensure fee as required by 201 KAR 43:030;~~]

(2) Review Supervisory Plans and Reports of Supervision;[~~Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(1); and~~]

(3) Make recommendations to the board to approve, defer, or deny applications; and[~~Proof of completion of at least five (5) hours of training in:~~

~~(a) Adult abuse and neglect prevention;~~

~~(b) Child abuse, neglect, and dependency prevention; or~~

~~(c) A combination of paragraphs (a) and (b) of this subsection.~~]

(4) Make recommendations to the board to approve or require revisions to Supervisory Plans and Reports of Supervision.

Section 3. [~~Licensure of Assistant Behavior Analysts. The applicant for licensure as an assistant behavior analyst shall submit:~~

~~(1) A check or money order payable to the Kentucky State Treasurer for the application review fee and the licensure fee as required by 201 KAR 43:030;~~

~~(2) Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(2); and~~

~~(3) Proof of completion of at least five (5) hours of training in:~~

~~(a) Adult abuse and neglect prevention;~~

~~(b) Child abuse, neglect, and dependency prevention; or~~

~~(c) A combination of paragraphs (a) and (b) of this subsection.~~

~~Section 4.~~] Incorporation by Reference. (1) Form ABA-001, "Application for Licensure", October 2021[~~October 2015~~]is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 500 Mero Street, 2SC32,[~~911 Leawood Drive~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at aba.ky.gov.

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/88507454480?pwd=NnAwczNBZTU5TnA3YkRvYWd1Z01MZz09

Password: 729285

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 913047

Find local AT&T Numbers:

https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=913047

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 885 0745 4480

Password: 729285

SIP: 88507454480@zoomcrc.com

Password: 729285

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for licensure.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319C.060(2)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

(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 clear that behavior analysists and assistant behavior analysists have different statutory licensing requirements. The amendment clarifies requirements for licensure, and what an applicant is required to submit to the board with their application. The amendment establishes an Applications Committee.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect an unknown number of applicants for licensure as behavior analysts and assistant behavior analysts. The regulation will affect the Board via the creation of the Applications Committee.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will provide updated requirements for licensure. Applications Committee members will be required to review applications for licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This administrative regulation, by reference to 201 KAR 43:030, stands to generate an additional $300 per licensed behavior analyst applicant, and an additional $200 per licensed behavior analyst assistant applicant.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow applicants for licensure to have an updated understanding of the requirements to obtain licensure, and makes clear that different applicants will have different requirements to obtain licensure.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Applied Behavior Analysis Licensing Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: By reference to the updated fees provided by the amended 201 KAR 43:030, this regulation will indirectly increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319C.060(2)(a).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation, by reference to 201 KAR 43:030, stands to generate an additional $300 per licensed behavior analyst applicant, and an additional $200 per licensed behavior analyst assistant applicant.

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(Amendment)

201 KAR 43:020. Application procedures for temporary licensure.

RELATES TO: RELATES TO: KRS 319C.080(3)

STATUTORY AUTHORITY: KRS 319C.060(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for temporary licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for temporary licensure.

Section 1. Application procedures. (1) An application for a temporary license as a behavior analyst or assistant behavior analyst shall[~~may~~] be submitted after the requirements established in KRS 319C.080(3) are met.

(2) The application required by subsection (1) of this section shall be made by submitting to the board a completed Form ABA-001, Application for Licensure, as incorporated by reference in 201 KAR 43:010.

(a) The application shall include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief;

2. Applicant is aware that [~~the board may take disciplinary action in accordance with KRS 319C.070 if the application contains~~]a misrepresentation or falsification in the application is grounds for denial or revocation of the license; and

3. Applicant is aware that any[~~the~~] temporary license issued expires four (4)[~~shall expire two (2)~~] years from the issuance date and shall not be renewed.

(b) If the applicant has completed the coursework through a Behavior Analyst Certification Board (BACB) or Association for Behavior Analysis International (ABAI) Verified Course Sequence (VCS)[~~BACB-approved program~~], the application shall include an official[~~original, certified~~] post-secondary transcript and VCS course sequence number.

(c) If the applicant has completed coursework from a non-BACB or non-ABAI VCS[~~-approved~~] program, the application shall include an official post-secondary transcript and course syllabi for all behavior-analytic coursework showing that the applicant has met the most current BACB coursework requirements for eligibility to sit for the Board Certified Behavior Analyst (BCBA) examination for applicants applying for a temporary license as a behavior analyst or the Board Certified Assistant Behavior Analyst examination for applicants applying for a temporary license as an assistant behavior analyst.[~~for a Board Certified Behavior Analyst or Board Certified Assistant Behavior Analyst.~~]

(3) The applicant shall submit check or money order payable to the Kentucky State Treasurer for the application review fee and the licensure fee as required by 201 KAR 43:030;

(4) The applicant shall submit proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(1); and

(5) The applicant shall submit proof of completion of at least five (5) hours of training in:

(a) Adult abuse and neglect;

(b) Child abuse, neglect, and dependency; or

(c) A combination of paragraphs (a) and (b) of this subsection. The completed proofs(s) shall indicate that abuse, neglect, or dependency was explicitly covered in the training.

(6) Applicants for temporary licensure as a behavior analyst or assistant behavior analyst shall also submit a completed Supervisory Plan for board approval.

(7) An application for full licensure may be submitted at any time within the four (4) year period temporary licensure period after meeting the requirements established in KRS 319C.080(1) and (2). A final Report of Supervision, as incorporated by reference in 201 KAR 43:050, shall also be submitted for board approval.[

~~Section 2. Temporary Licensure of Behavior Analysts. The applicant for temporary licensure as a behavior analyst shall:~~

~~(1) Submit a check or money order payable to the Kentucky State Treasurer for the application review fee and the temporary licensure fee as required by 201 KAR 43:030;~~

~~(2) Submit proof of compliance with the requirements established in KRS 319C.080(3); and~~

~~(3) Submit proof of completion of at least five (5) hours of training in:~~

~~(a) Adult abuse and neglect prevention; and~~

~~(b) Child abuse, neglect, and dependency prevention.~~

~~Section 3. Temporary Licensure of Assistant Behavior Analysts. The applicant for temporary licensure as an assistant behavior analyst shall:~~

~~(1) Submit a check or money order payable to the Kentucky State Treasurer for the application review fee and the temporary licensure fee as required by 201 KAR 43:030;~~

~~(2) Submit proof of compliance with the requirements established in KRS 319C.080(3); and~~

~~(3) Submit proof of completion of at least five (5) hours of training in:~~

~~(a) Adult abuse and neglect prevention; and~~

~~(b) Child abuse, neglect, and dependency prevention.~~]

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/88507454480?pwd=NnAwczNBZTU5TnA3YkRvYWd1Z01MZz09

Password: 729285

Or Telephone:

Dial:

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149.137.24.110 (Japan Osaka)

Meeting ID: 885 0745 4480

Password: 729285

SIP: 88507454480@zoomcrc.com

Password: 729285

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for temporary licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for temporary licensure.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319C.060(2)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for temporary licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for temporary licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

(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 clear that behavior analysists and assistant behavior analysists have different statutory licensing requirements. The amendment clarifies requirements for temporary licensure, and what an applicant is required to submit to the board with their application.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect an unknown number of applicants for temporary licensure as behavior analysts and assistant behavior analysts.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will provide updated requirements for temporary licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This

regulation should add no additional cost to applicants for temporary licensure.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow applicants for temporary licensure to have an updated understanding of the requirements to obtain temporary licensure, and makes clear that different applicants will have different requirements to obtain licensure.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Applied Behavior Analysis Licensing Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Though this amendment references the updated fees provided by the amended 201 KAR 43:030, this regulation will not indirectly increase fees for applicants for temporary licensure.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319C.060(2)(a).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation generates no additional revenue for the Board.

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(Amendment)

201 KAR 43:030. Fees.

RELATES TO: KRS 319C.060(2)(f), 319C.080(1), (2), (3)

STATUTORY AUTHORITY: KRS 319C.060(2)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(f) requires the board to promulgate administrative regulations establishing reasonable fees for the licensure and license renewal of behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes those fees.

Section 1. Application and licensure fees for licensed behavior analysts. (1) An applicant for licensure as a licensed behavior analyst shall pay the following:

(a) A $400[~~100 nonrefundable~~] application review and licensure fee[~~;~~] for the first two (2) year licensure period;[~~and~~]

(b) A licensed assistant behavior analyst applying for licensure as a licensed behavior analyst for the remainder of their[~~A $300 licensure fee for the~~] two (2) year licensure period shall pay a $100 non-refundable application review fee;

(c) A temporary licensed behavior analyst applying for licensure as a licensed behavior analyst for the remainder of their four (4) licensure period shall pay a non-refundable $100 application review fee; and

(d) A temporary licensed assistant behavior analyst applying for licensure as a licensed behavior analyst for the remainder of their four (4) licensure period shall pay a non-refundable $100 application review fee.

(2) The licensure renewal fee for a licensed behavior analyst for each subsequent, two (2) year licensure period shall be $300.

Section 2. Application and Licensure Fees for Licensed Assistant Behavior Analysts. (1) An applicant for licensure as a licensed assistant behavior analyst shall pay the following:

(a) A $300[~~100 nonrefundable~~]application review and licensure fee[~~;~~] for the first two (2) year licensure period.[~~and~~]

(b) A temporary licensed assistant behavior analyst applying for licensure as a licensed assistant behavior analyst for the remainder of the four (4)[~~A $200 licensure fee for the first two (2)~~] year licensure period shall pay a $100 non-refundable application review fee.

(2) The licensure renewal fee for a licensed assistant behavior analyst for each subsequent, two (2) year licensure period shall be $200.

Section 3. Application and Temporary Licensure Fees. (1) An applicant for a temporary license as a behavior analyst shall pay a $300 [~~the following:~~

~~(a) A $100 nonrefundable~~] application review [~~fee;~~] and[

~~(b) A $200 temporary~~] licensure fee for the four (4)[~~two (2)~~] year temporary licensure period.

(2) An applicant for a temporary license as an assistant behavior analyst shall pay a $200 [~~the following:~~

~~(a) A $100 nonrefundable~~] application review [~~fee;~~] and[

~~(b) A $100 temporary~~] licensure fee for the four (4)[~~two (2)~~] year temporary licensure period.

Section 4. Fees for Inactive Status. (1) A licensed behavior analyst or a licensed assistant behavior analyst who applies for inactive status shall pay a fee of $100.

(2) A licensed behavior analyst or a licensed assistant behavior analyst who applies to renew their inactive status shall pay a fee of $100.

Section 5. A licensed behavior analyst or a licensed assistant behavior analyst who applies for retired status shall pay a fee of $100 dollars.

Section 6. Fees for Late Renewal or Reinstatement of a

Licensed Behavior Analyst and Licensed Assistant Behavior Analyst. (1) A licensed behavior analyst or a licensed assistant behavior analyst who files to renew his or her license after its renewal date but within thirty (30) days of that renewal date shall pay a late fee of fifty (50) dollars in addition to the fee set forth in Section 1 or 2 of this administrative regulation.

(2) A licensed behavior analyst or a licensed assistant behavior analyst who files to reinstate his or her expired license more than thirty (30) days after its renewal date [~~but within three (3) years of that renewal date~~]shall pay a reinstatement fee of $250 in addition to the fee set forth in Section 1 or 2 of this administrative regulation.

(3) A licensed behavior analyst or a licensed assistant behavior analyst who applies to reinstate following a period of board-approved inactive status or retirement shall pay a reinstatement fee of $100 in addition to the renewal fee set forth in Section 1 or 2 of this administrative regulation.

Section 7. For applications that are denied, the applicant may request a fifty (50) percent refund of the application and licensure review fee in writing to the board administrator within ninety (90) days.

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/88507454480?pwd=NnAwczNBZTU5TnA3YkRvYWd1Z01MZz09

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149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 885 0745 4480

Password: 729285

SIP: 88507454480@zoomcrc.com

Password: 729285

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319C.060(2)(f) requires the board to promulgate administrative regulations establishing reasonable fees for the licensure and license renewal of behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes those fees.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319C.060(2)(f).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319C.060(2)(f) requires the board to promulgate administrative regulations establishing reasonable fees for the licensure and license renewal of behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes those fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319C by establishing fees for licensure and renewal.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the required fees for licensure and renewal. The amendment establishes a fee for placing a license on inactive or retired status.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect an unknown number of applicants for licensure as behavior analysts and assistant behavior analysts, and an unknown number of applicants for temporary licensure. The regulation will affect 11 licensed assistant behavior analysts, 482 licensed behavior analysts, and 6 temporary behavior analysts.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will update licensure and renewal fee requirements. This regulation will require fees should a license be placed on inactive or retired status, and fees should an inactive or retired status license be reinstated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This

administrative regulation stands to generate an additional $300 per licensed behavior analyst applicant, and an additional $200 per licensed behavior analyst assistant applicant. This regulation will generate $100 for a license to be placed on inactive or retired status, and $100 any time an inactive or retired status license is reinstated.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow applicants for licensure to have an updated understanding of the various fee requirements for licensure.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Applied Behavior Analysis Licensing Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319C.060(2)(f).

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

(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, by reference to 201 KAR 43:030, stands to generate for the board an additional $300 per licensed behavior analyst applicant, and an additional $200 per licensed behavior analyst assistant applicant. $100 per applicant for inactive or retired status, and $100 should an inactive or retired licensee seek reinstatement.

(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? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(Amendment)

201 KAR 43:040. Code of ethical standards and standards of practice.

RELATES TO: KRS 319C.060(1), (2)(c)

STATUTORY AUTHORITY: KRS 319C.060(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(c) requires the board to adopt a code of ethical standards and standards of practice for all licensed behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes the code of ethical standards and standards of practice for licensees.

Section 1. Definitions. (1) "BACB Code" means the Behavior Analyst Certification Board ("BACB") January 1, 2022 Ethics Code for Behavior Analysts.

(2) In addition to the definition set forth in the BACB Code, "Behavior analyst" means a person was licensed under KRS Chapter 319C as a licensed behavior analyst, a licensed assistant behavior analyst, or a temporary licensee.

(3)[~~(2)~~] In addition to the definition set forth in the BACB Code, "Client" means a person who receives behavior analytic assessment, intervention, consultation, treatment, or other professional services for the purpose of practicing applied behavior analysis. A corporate entity or other organization shall be considered the client if the professional contract is to provide a professional service of benefit to the corporate entity or organization. A legal guardian of a minor or legally incompetent adult shall be considered the client for a decision-making purpose.[~~who meets the requirements established in Section 2 of this administrative regulation.~~]

(4)[~~(3)~~] "Confidential information" means information revealed by a client or clients or otherwise obtained by a behavior analyst in a professional relationship and includes all data, assessments, and recommended interventions as confidential.

(5)[~~(4)~~] "Court order" means the written or oral communication of a member of the judiciary, or other court magistrate or administrator, if the authority has been lawfully delegated to the magistrate or administrator.

(6)[~~(5)~~] "Kentucky Code" means the Code of Ethics set forth in this administrative regulation.

(7) "Professional relationship" means a mutually agreed upon relationship between a behavior analyst and a client for the purpose of the client obtaining the behavior analyst's professional expertise.

(8)[~~(6)~~] "Professional service" means all actions of the behavior analyst in the context of a professional relationship with a client.

(9)[~~(7)~~] "Technician[~~Supervisee~~]" means a person who functions under the extended authority of the behavior analyst to implement[~~provide~~] behavioral services.

(10)[~~(8)~~] In addition to the definition set forth in the BACB Code, "Trainee" means a person who is acquiring experience in applied behavior analysis toward an eligibility requirement for either a BCBA or BCaBA certification credential.

Section 2. Administration and Enforcement of the Code of Ethics. (1) Notwithstanding the requirements of the BACB Code, the changes established in the Kentucky Code shall be mandatory and shall supersede any conflicting provisions of the BACB Code.

(2) Except as superseded by the provisions of this administrative regulation and the Kentucky Code, the BACB Code shall be the mandatory ethics code for Kentucky Applied Behavior Analysts.

Section 3. Additional Requirements for Kentucky Licensees. (1) Reporting of abuse of children and vulnerable adults. The behavior analyst shall be familiar with the relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with those laws, including KRS 620.030.

(2) Disclosure without informed written consent. The behavior

analyst shall disclose confidential information without the informed consent of the client if the behavior analyst has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270.[~~Client Requirements. (1) Identification of a client. A client shall be a person who receives:~~

~~(a) An evaluation, assessment, or professional services;~~

~~(b) Other professional services for the purpose of practicing applied behavior analysis or applied behavior analysis interventions; or~~

~~(c) Consultation regarding applied behavior analysis or applied behavior analysis interventions in the context of a professional relationship~~].

~~(2) A corporate entity or other organization shall be considered the client if the professional contract is to provide a professional service of benefit to the corporate entity or organization.~~

~~(3) A legal guardian of a minor or legally incompetent adult shall be considered the client for a decision-making purpose.~~

~~(4) A person identified as a client pursuant to subsections (1) to (3) of this section shall be deemed to continue to be a client for a period of two (2) years following the last date of service rendered to the person.~~]

~~Section 3. Competence. (1) Limits on practice. The behavior analyst shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.~~

~~(2) Maintaining competency. The behavior analyst shall maintain current competency in the areas in which he or she practices, through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge.~~

~~(3) Adding new services and techniques. The behavior analyst, if developing competency in a service or technique that is new either to the behavior analyst or new to the profession, shall engage in ongoing consultation with other behavior analysts or relevant professionals and shall obtain appropriate education and training. The behavior analyst shall inform a client of the innovative nature and the known risks associated with the service, so that the client can exercise freedom of choice concerning the service.~~

~~(4) Referral. The behavior analyst shall make or recommend a referral to other professional, technical, or administrative resources if a referral is clearly in the best interests of the client.~~

~~(5) Sufficient professional information. A behavior analyst rendering a formal professional opinion in a report, letter, or testimony about a person shall not do so without direct and substantial professional contact with or a formal assessment of that person.~~

~~(6) Maintenance and retention of records.~~

~~(a) The behavior analyst rendering professional services to an individual client, or services billed to a third-party payor, shall maintain professional records that include:~~

~~1. The presenting problem, purpose, or diagnosis from another mental health professional;~~

~~2. The fee arrangement;~~

~~3. The date and substance of each professional contact or service;~~

~~4. Test results or other evaluative results obtained and the basic test data from which the results were derived;~~

~~5. Notation and results of a formal consult with another provider; and~~

~~6. A copy of all test or other evaluative reports prepared as part of the professional relationship.~~

~~(b) The behavior analyst shall ensure that all records are maintained for a period of not less than six (6) years after the last date that services were rendered.~~

~~(c) The behavior analyst shall store and dispose of written, electronic and other records in a manner which shall ensure their confidentiality.~~

~~(d) For each person supervised pursuant to KRS Chapter 319C, the behavior analyst shall maintain for a period of not less than six (6) years after the last date of supervision a record of each supervisory session that shall include the type, place, date, and general content of the session.~~

~~(7) Continuity of care. The behavior analyst shall make arrangements for another appropriate professional or professionals to provide for an emergency need of a client, as appropriate, during a period of his or her foreseeable absence from professional availability.~~

~~Section 4. Impaired Objectivity.~~ [~~and Dual Relationships. (1) Impaired behavior analyst.(a) The behavior analyst shall not undertake or continue a professional relationship with a client if the objectivity or competency of the behavior analyst is impaired due to a mental, emotional, physiologic, pharmacologic, or substance abuse condition.~~

~~(b) If an impairment develops after a professional relationship has been initiated, the behavior analyst shall:~~

~~1. Terminate the relationship in an appropriate manner;~~

~~2. Notify the client in writing of the termination; and~~

~~3. Assist the client in obtaining services from another professional.~~

~~(2) Prohibited dual relationships.~~

~~(a) The behavior analyst shall not undertake or continue a professional relationship with a client, or the client's parent or legal guardian, if the objectivity or competency of the behavior analyst is impaired because of the behavior analyst's present or previous familial, social, sexual, emotional, financial, supervisory, administrative, or legal relationship with the client or a relevant person associated with or related to the client.~~

~~(b) The behavior analyst, in interacting with a client, or the client's parent or legal guardian, shall not:~~

~~1. Engage in verbal or physical behavior toward the client, or the client's parent or legal guardian, which is sexually seductive, demeaning, or harassing;~~

~~2. Engage in sexual intercourse or other physical intimacy with the client or the client's parent or legal guardian; or~~

~~3. Enter into a potentially exploitative relationship with the client, or the client's parent or legal guardian.~~

~~(c) The prohibitions established in paragraph (b) of this subsection shall extend indefinitely if the client is clearly vulnerable, by reason of emotional or cognitive disorder, to exploitative influence by the behavior analyst.~~

~~Section 5. Client Welfare. (1) Providing explanation of procedures. The behavior analyst shall give a truthful, understandable, and appropriate account of the client's condition to the client or to those responsible for the care of the client. The behavior analyst shall keep the client fully informed as to the purpose and nature of an evaluation, treatment, or other procedure, and of the client's right to freedom of choice regarding services provided.~~

~~(2) Termination of services.~~

~~(a) If professional services are terminated, the behavior analyst shall offer to assist the client in obtaining services from another professional.~~

~~(b) The behavior analyst shall:~~

~~1. Terminate a professional relationship if the client is not benefiting from the services; and~~

~~2. Prepare the client appropriately for the termination.~~

~~(3) Stereotyping. The behavior analyst shall not impose on the client a stereotype of behavior, values, or roles related to age, gender, religion, race, disability, nationality, sexual preference, or diagnosis, which would interfere with the objective provision of professional services to the client.~~

~~(4) Solicitation of business by clients. The behavior analyst providing services to an individual client shall not induce that client, or the client's parent or legal guardian, to solicit business on behalf of the behavior analyst.~~

~~(5) Referrals on request. The behavior analyst providing services to a client shall make an appropriate referral of the client to another professional if requested to do so by the client.~~

~~Section 6. Welfare of Supervisees, and Research Subjects. (1) Welfare of supervisees. The behavior analyst shall not exploit a supervisee.~~

~~(2) Welfare of research subjects. The behavior analyst shall~~

~~respect the dignity and protect the welfare of his or her research subjects, and shall comply with all relevant statutes and administrative regulations concerning treatment of research subjects.~~

~~Section 7. Protecting the Confidentiality of Clients. (1) General. The behavior analyst shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional services. Except as provided in this section, the behavior analyst shall obtain the informed written consent of the client prior to disclosing confidential information.~~

~~(2) Disclosure without informed written consent. The behavior analyst shall disclose confidential information without the informed consent of the client if the behavior analyst has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270.~~

~~(3) Disclosure if the client is a corporation or other organization. If the client is a corporation or other organization, the requirements for confidentiality established in this section shall:~~

~~(a) Apply to information that pertains to:~~

~~1. The corporation or organization; or~~

~~2. An individual, including personal information, if the information is obtained in the proper course of the contract; and~~

~~(b) Not apply to personal information concerning an individual if the individual had a reasonable expectation that the information was:~~

~~1. Obtained in a separate professional relationship between the behavior analyst and the individual; and~~

~~2. Subject to the confidentiality requirements established in this section.~~

~~(4) Services involving more than one (1) interested party. If more than one (1) party has an appropriate interest in the professional services rendered by the behavior analyst to a client or clients, the behavior analyst shall clarify to all parties prior to rendering the services the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services.~~

~~(5) Multiple clients. If service is rendered to more than one (1) client during a joint session, the behavior analyst shall, at the beginning of the professional relationship, clarify to all parties the manner in which confidentiality shall be handled.~~

~~(6) Legally dependent clients. At the beginning of a professional relationship, the behavior analyst shall inform a client who is below the age of majority or who has a legal guardian of the limit the law imposes on the right of confidentiality with respect to his or her communications with the behavior analyst.~~

~~(7) Limited access to client records. The behavior analyst shall limit access to client records to preserve their confidentiality and shall ensure that all persons working under the behavior analyst's authority comply with the requirements for confidentiality of client material.~~

~~(8) Release of confidential information. The behavior analyst shall release confidential information upon court order or to conform with state law, including KRS 422.317, or federal law or regulation.~~

~~(9) Reporting of abuse of children and vulnerable adults. The behavior analyst shall be familiar with the relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with those laws, including KRS 620.030.~~

~~(10) Discussion of client information among professionals. If rendering professional services as part of a team or if interacting with other appropriate professionals concerning the welfare of the client, the behavior analyst may share confidential information about the client if the behavior analyst takes reasonable steps to ensure that all persons receiving the information are informed about the confidential nature of the information and abide by the rules of confidentiality.~~

~~(11) Disguising confidential information. If case reports or other confidential information is used as the basis of teaching, research, or other published reports, the behavior analyst shall exercise reasonable care to ensure that the reported material is appropriately disguised to prevent client identification.~~

~~(12) Observation and electronic recording. The behavior analyst shall ensure that diagnostic interviews or therapeutic sessions with a client are observed or electronically recorded only with the informed written consent of the client.~~

~~(13) Confidentiality after termination of professional relationship. The behavior analyst shall continue to treat as confidential information regarding a client after the professional relationship between the behavior analyst and the client has ceased.~~

~~Section 8. Representation of Services. (1) Display of credentials. The behavior analyst shall display his or her current credential to practice on the premises of his or her professional office.~~

~~(2) Misrepresentation of qualifications. The behavior analyst shall not misrepresent directly or by implication his or her professional qualifications such as education, experience, or areas of competence.~~

~~(3) Misrepresentation of affiliations. The behavior analyst shall not misrepresent directly or by implication his or her affiliations, or the purposes or characteristics of institutions and organizations with which the behavior analyst is associated.~~

~~(4) False or misleading information. The behavior analyst shall not include false or misleading information in a public statement concerning professional services offered.~~

~~(5) Misrepresentation of services or products. The behavior analyst shall not associate with or permit his or her name to be used in connection with a service or product in a way which misrepresents:~~

~~(a) The service or product;~~

~~(b) The degree of his or her responsibility for the service or product; or~~

~~(c) The nature of his or her association with the service or product.~~

~~(6) Correction of misrepresentation by others. The behavior analyst shall correct others who misrepresent the behavior analyst's professional qualifications or affiliations.~~

~~Section 9. Disclosure of Cost of Services. The behavior analyst shall not mislead or withhold from a client, prospective client, or third party payor, information about the cost of his or her professional services.~~

~~Section 10. Assessment Procedures. (1) Confidential information. The behavior analyst shall treat as confidential assessment results or interpretations regarding an individual.~~

~~(2) Protection of integrity of assessment procedures. The behavior analyst shall not disseminate a test in a way that may invalidate it.~~

~~(3) Information for professional users. The behavior analyst offering an assessment procedure or automated interpretation service to another professional shall:~~

~~(a) Accompany this offering by a manual or other printed material which describes the development of the assessment procedure or service, the rationale, evidence of validity and reliability, and characteristics of the normative population;~~

~~(b) State the purpose and application for which the procedure is recommended and identify special qualifications required to administer and interpret it properly; and~~

~~(c) Ensure that advertisements for the assessment procedure or interpretive service are factual.~~

~~Section 11. Delegating professional responsibility. The behavior analyst shall not delegate professional responsibilities to a person not appropriately credentialed or otherwise appropriately qualified to provide professional services.~~]

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601.

All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:
Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/88507454480?pwd=NnAwczNBZTU5TnA3YkRvYWd1Z01MZz09
Password: 729285
Or Telephone:
Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 913047

Find local AT&T Numbers:
https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=913047

Or an H.323/SIP room system:
H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 885 0745 4480
Password: 729285
SIP: 88507454480@zoomcrc.com
Password: 729285

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319C.060(2)(c) requires the board to adopt a code of ethical standards and standards of practice for all licensed behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes the code of ethical standards and standards of practice for licensees.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319C.060(2)(c).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319C.060(2)(c) requires the board to adopt a code of ethical standards and standards of practice for all licensed behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes the code of ethical standards and standards of practice for licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the Code of Ethics to incorporate the Behavior Analyst Certification Board Ethics Code for Behavioral Analysts.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 11 licensed assistant behavior analysts, 482 licensed behavior analysts, 6 temporary behavior analysts, and 6 temporary registered telehealth healthcare providers.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will provide an update Code of Ethics with which licensees will be required to follow.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: None.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow licensees to have an updated understanding of their ethical requirements.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Applied Behavior Analysis Licensing Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319C.060(2)(c).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(Amendment)

201 KAR 43:050. Requirements for supervision.

RELATES TO: KRS 319C.050(1) and 319C.060(2)(a)-(d)

STATUTORY AUTHORITY: KRS 319C.060(2)(a)-(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate an administrative regulation governing the supervision of a licensed assistant behavior analyst, temporarily licensed behavior analyst, and temporarily licensed assistant behavior analyst. This administrative regulation establishes the requirements for supervision.

Section 1. Definitions. (1) "Direct supervision" means in-person interactions between the supervisor and the licensee under his or her supervision which includes direct observation of actual service provision to individuals.

(2) "General supervision" means interactions between the supervisor and the licensee under his or her supervision involving real time visual and auditory contact, conducted in-person or via electronic means.

(3) “Licensed supervisee” means an individual holding licensure in Kentucky as a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst permitted to practice the items from the most current BCBA Task List for Temporary Licensed Behavior Analysts and BCaBA Task List for Temporary Licensed Assistant Behavior Analysts and Assistant Behavior Analysts under the direction of a Licensed Behavior Analyst qualified to supervise.

(4) “Supervisee” means a person who is not licensed but acts under the extended authority and direction of a licensed behavior analyst or a licensed assistant behavior analyst to provide applied behavior analysis services; and limits their practice to the items from the most current BACB Registered Behavior Technician Task List.

(5) “Unlicensed supervisee” means an individual accruing fieldwork/experience toward fulling eligibility requirements for BCaBA or BCBA certification without a license permitted to practice the items from the most current BCBA Task List for Temporary licensed Behavior Analysts and BCaBA Task List for Temporary Licensed Assistant Behavior Analysts and Assistant Behavior Analysts under the direction of an individual qualified to supervise under the Behavior Analyst Certification Board’s (BACB) supervision standards under limited conditions.

Section 2. Qualifications to Supervise. In order to provide supervision to a licensed supervisee[~~assistant behavior analyst, a temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~], a Licensed Behavior Analyst[~~licensed behavior analyst~~] shall[~~be~~]:

(1) Be licensed in good standing in Kentucky;

(2) Be currently certified by the Behavior Analyst Certification Board as a:

(a)[~~(1)~~] Board Certified Behavior Analyst[~~,~~] (BCBA); or

(b)[~~(2)~~] Board Certified Behavior Analyst - Doctoral[~~,~~] (BCBA-D)[~~.~~]; and

(3) Meet and maintain qualifications to supervise under the Behavior Analyst Certification Board's (BACB) supervision requirements.

Section 3. Supervisory Plan and Report of Supervision[~~Supervisor Responsibilities~~]. (1) Except as provided in Section 15[~~16~~] of this administrative regulation, a supervisory arrangement shall be submitted to the board for approval using a completed Supervisory Plan[~~the Application for Licensure Form~~], as incorporated by reference in 201 KAR 43:010, by[~~with~~] the supervisor and the licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst petitioning the board in writing~~].

(2) The supervisor and the licensed supervisee shall jointly complete and submit to the board a completed Supervisory Plan upon application for licensure and again annually or biannually as required in this administrative regulation.

(3) The supervisor and the licensed supervisee shall jointly complete and submit to the board a Report of Supervision either annually or biannually as required in this administrative regulation. A final Report of Supervision shall also be submitted to the board at the end of the supervisory relationship.

(4) In calculating the amount of time spent in full-time practice while under supervision, 1,500 hours of satisfactory supervised practice shall be equivalent to one (1) year of experience.

(a) A licensed assistant behavior analyst with five (5) or more years of full-time practice, or its equivalent, shall submit a Report of Supervision and an updated Supervisory Plan every two (2) years prior to renewal.

(b) A licensed assistant behavior analyst with fewer than five (5) years of full-time practice, or its equivalent, shall submit a Report of Supervision and an updated Supervisory Plan annually on the anniversary of the date of licensure as a licensed assistant behavior analyst and prior to renewal.

(c) A temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst shall submit a Report of Supervision and an updated Supervisory Plan annually on the anniversary of the date of licensure as a temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst. A final Report of Supervision must be submitted upon application for full licensure.

(5) The Supervisory Plan shall include measurable goals for supervision and shall focus on a majority of items from the most current BCBA Task List for Temporary Licensed Behavior Analysts and BCaBA Task List for Temporary Licensed Assistant Behavior Analysts and Assistant Behavior Analysts.

(6) The Report of Supervision shall include:

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

(b) An assessment of the functioning of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, including the strengths and weaknesses;

(c) The methods that the supervisor and licensed assistant behavior analyst practicing under the direction of the supervisor shall employ to plan, report, and evaluate the supervisory process; and

(d) Any other information, which the supervisor deems relevant to an adequate assessment of the practice of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst.

(7) The supervisor and licensed assistant behavior analyst,

temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement by submitting an updated [~~Annual~~] Supervisory Plan no later than thirty (30) days after a change in the effective date of the arrangement or change. A final Report of Supervision shall also be submitted at the termination of any supervisory relationship.

(8) The board may require additional supervised practice if recommended by the supervisor on a licensee's Supervisory Plan or Report of Supervision.

Section 4. Supervisory Responsibilities. (1) The supervisor shall assure that the practice of each licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] is in compliance with this administrative regulation. [~~The supervisor shall include in the Annual Supervisory Plan and keep in the record as required by subsection (6) of this section review, discussions, and recommendations and shall focus on:~~

~~(a) Case background information;~~

~~(b) Planned behavioral assessment procedures;~~

~~(c) Assessment outcomes;~~

~~(d) data collection procedures;~~

~~(e) Intervention procedures and materials;~~

~~(f) Intervention outcome data;~~

~~(g) Modifications of intervention procedures;~~

~~(h) Ethical issues associated with behavior change services or employment; and~~

~~(i) Professional development needs and opportunities.~~]

(2) The supervisor shall report to the board an apparent violation of KRS Chapter 319C on the part of the supervisee[~~licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~].

(3) The supervisor shall inform the board administrator in writing or electronically[~~immediately~~] of a change in the ability to supervise, or in the ability of a licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] to function in the practice as a licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] in a competent manner.

(4) The supervisor shall control, direct, or limit the behavior analytic duties performed by the licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] practicing under the direction of the supervisor to ensure that these duties are competently performed.

(5)(a) The supervisor of record shall be responsible for the behavior analytic duties of the licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] practicing under the direction of the supervisor.

(b) If the board initiates an investigation concerning a licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] practicing under the direction of the supervisor, the investigation shall include the supervisor of record.

(6)(a) For each person supervised, the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session.

(b) This record shall be maintained for a period of not fewer than seven (7)[~~six (6)~~] years after the last date of supervision.

Section 5. Multiple Supervisors.[~~(1) In calculating the amount of time spent in full-time practice while under supervision, 1,500 hours of satisfactory supervised practice shall be equivalent to one (1) year of experience.~~

~~(2) The board may require additional supervised practice if recommended by the supervisor on a licensee's Annual Supervisory Plan or Annual Report of Supervision.~~

~~(3)(a) The supervisor shall provide reports to the board of the supervision of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor as follows:~~

~~1. A licensed assistant behavior analyst with five (5) or more years of full-time practice, or its equivalent, shall submit a report every two (2) years on the anniversary of the date of licensure as a licensed assistant behavior analyst.~~

~~2. A licensed assistant behavior analyst with fewer than five (5) years of full-time practice, or its equivalent, shall submit a report annually on the anniversary of the date of licensure as a licensed assistant behavior analyst.~~

~~3. A temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst shall submit a report annually on the anniversary of the date of licensure as a temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst.~~

~~(b) The report shall be submitted on the Annual Report of Supervision which shall include:~~

~~1. A description of the frequency, format, and duration of supervision;~~

~~2. An assessment of the functioning of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, including the strengths and weaknesses; and~~

~~3. Any other information which the supervisor deems relevant to an adequate assessment of the practice of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst.~~

~~Section 6.~~] (1) If a licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and they shall each provide individual Supervisory Plans and Reports of Supervision to the board as well as[~~and~~] copies to each other.

(2) A request to have more than two (2) supervisors at one (1) time shall be subject to board approval and shall be submitted by new applicants on the licensure application and the[~~Annual~~] Supervisory Plan and by existing licensees on the[~~Annual~~] Supervisory Plan, which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 6.[~~Section 7.~~] Supervisor Experience. If a licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] practicing under the direction of the supervisor is a behavior analyst with less than five (5) years of fulltime, post-certification practice, or its equivalent, or a licensure candidate with temporary permission to practice, the supervisor of record shall:

(1) Read and countersign all assessments and treatment plans to assess the competency of the licensed supervisee to render applied behavior analytic services;

(2) Review[~~treatment plans,~~] notes and correspondence on an as-needed basis[~~to assess the competency of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst to render applied behavior analytic services~~];

(3) [~~Jointly establish a supervisory plan with the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, which shall be submitted to the board at the beginning of the supervisory relationship using the Annual Supervisory Plan. The plan shall:~~

~~(a) Be updated or revised and submitted to the board with the regular report of supervision;~~

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

~~(c) Include methods that the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor shall employ to evaluate the supervisory process;~~

~~(4)~~] Have general supervision of the work performed by the

licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] practicing under the direction of the supervisor at least twice per month;

(4)[~~(5)~~] Have direct supervision of the work performed by the licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] practicing under the direction of the supervisor at least once every three (3) months;

(5)[~~(6)~~] Have direct knowledge of the size and complexity of the caseload for each licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] practicing under the direction of the supervisor;

(6)[~~(7)~~] Limit and control the caseload as appropriate to the level of competence of each licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] practicing under the direction of the supervisor;

(7)[~~(8)~~] Have knowledge of the techniques being used by the licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~]; and

(8)[~~(9)~~] Have knowledge of the physical and emotional well-being of each licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] practicing under the direction of the supervisor when it has a direct bearing on his or her competence to practice.

Section 7.[~~Section 8.~~] Licensed Supervisee Experience. If the licensed assistant behavior analyst[~~or temporarily licensed behavior analyst~~] is a behavior analyst with more than five (5) years of fulltime, post-certification practice, or its equivalent, the supervisor of record shall:

(1) Review and countersign assessments as needed or appropriate;

(2) Review treatment plans, notes, and correspondence as needed or appropriate;

~~(3) Jointly establish a supervisory plan with each licensed assistant behavior analyst, or temporarily licensed behavior analyst practicing under the direction of the supervisor, which shall be submitted to the board at the beginning of the supervisory relationship using the Annual Supervisory Plan. The plan shall:~~

~~(a) Be updated or revised and submitted to the board with the regular report of supervision;~~

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

~~(c) Include methods that the supervisor and licensed assistant behavior analyst, or temporarily licensed behavior analyst practicing under the direction of the supervisor shall employ to evaluate the supervisory process;~~

(3)[~~(4)~~] Have general supervision of the work performed by each licensed assistant behavior analyst[~~or temporarily licensed behavior analyst~~] practicing under the direction of the supervisor at least once per month;

(4)[~~(5)~~] Have direct supervision of the work performed by each licensed assistant behavior analyst[~~or temporarily licensed behavior analyst~~] practicing under the direction of the supervisor at least twice a year;

(5)[~~(6)~~] Have direct knowledge of the size and complexity of the caseloads for each licensed assistant behavior analyst[~~or temporarily licensed behavior analyst~~] practicing under the direction of the supervisor;

(6)[~~(7)~~] Limit and control the caseload as appropriate to the level of competence of each licensed assistant behavior analyst[~~or temporarily licensed behavior analyst~~];

(7)[~~(8)~~] Have knowledge of the techniques being used by each licensed assistant behavior analyst[~~or temporarily licensed behavior analyst~~]; and

(8)[~~(9)~~] Have knowledge of the physical and emotional well-being of each licensed assistant behavior analyst[~~or temporarily licensed behavior analyst~~] practicing under the direction of the supervisor when it has a direct bearing on his or her competence to practice.

Section 8.[~~Section 9.~~] Supervision Requirements. (1)[~~(a)~~] A licensed assistant behavior analyst shall meet these supervision requirements, even if he or she is not currently providing behavior analytic services, unless having obtained Inactive status by the board.

(2)[~~(b)~~] If the licensed assistant behavior analyst is not currently providing behavior analytic services, supervision may focus on guiding the development and maintenance of the licensed assistant behavior analyst's professional knowledge and skills and remaining current with the professional literature in the field.[

~~(2) Upon resumption of practice, the licensed assistant behavior analyst shall document compliance with continuing education requirements and shall report on his or her activities and employment related to behavior analysis during the period in which the analyst did not practice.~~]

Section 9.[~~Section 10.~~] Supervision for Part-Time Practice. Supervision requirements for part-time practice may be modified by the board upon approval of the submitted plan. Additional modifications of the format, frequency, or duration of supervision may be submitted for approval by the board.

Section 10.[~~Section 11.~~] Supervisory Changes. (1) Upon a change of supervisor, an updated[~~Annual~~] Supervisory Plan shall be submitted by the supervisor that is starting supervision and the licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] to the board for approval. This plan may require additional supervision than was previously approved by the board.

(2) Upon termination of the supervisory relationship, the final[~~Annual~~] Report of Supervision shall be submitted to the board by the supervisor that is discontinuing supervision within thirty (30) days of the termination.

Section 11.[~~Section 12.~~] Licensed Supervisee Responsibilities.[~~Responsibilities of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] The licensed supervisee[~~assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst~~] shall:

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

(2) Seek supervision as needed in addition to a regularly scheduled supervisory session;

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

(4) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board in accordance with the reporting schedule established in Section 3[~~5~~] of this administrative regulation; and

(5) Report to the board any apparent violation of KRS Chapter 319C on the part of the supervisor.

Section 12.[~~Section 13.~~] Identification of Provider in Billing. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the assistant behavior analyst, temporarily licensed behavior analyst, trainee, supervisee, technician, or other provider and supervised by the licensed behavior analyst.

Section 13.[~~Section 14.~~] Disciplinary Procedures and Supervision of a Disciplined License Holder. (1) The board shall appoint an approved supervisor to supervise a disciplined license holder for the period of time defined by the final order or settlement agreement conferring the discipline.

(2) When specified by the final order or settlement agreement, the disciplined license holder shall be responsible for paying the costs of supervision.

(3) The supervisor shall:

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

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

1. Summarize the actions and concerns of the board;

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

3. Develop a specific plan of supervision; and

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

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

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

(e) Ensure that the disciplined license holder's practice is in compliance with KRS Chapter 319C and 201 KAR Chapter 43;

(f) Report to the board any apparent violation of KRS Chapter 319C on the part of the disciplined license holder;

(g) Immediately report to the board, in writing, a change in the ability to supervise, or in the ability of the disciplined license holder to function in the practice of a licensed behavior analyst in a competent manner;

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

(i) Review treatment plans, notes, and correspondence as needed or appropriate;

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

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

(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined license holder; and

(m) Have knowledge of the disciplined license holder's physical and emotional wellbeing when it has direct bearing on the disciplined license holder's competence to practice.

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

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

(6)(a) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision.

(b) The meeting shall include the supervisor, disciplined license holder, and board liaison.

(c) A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14.[~~Section 15.~~] Board Liaison for Disciplined License Holder. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:

(1) Recruit the supervising licensed behavior analyst from a list provided by the board;

(2) Provide the supervising licensed behavior analyst with the originating complaint, agreed order or findings of the hearing and supply other material relating to the disciplinary action;

(3) Ensure that the supervising licensed behavior analyst is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board and has immunity commensurate with that of a board member;

(4) Provide the supervising licensed behavior analyst with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;

(5) Ensure that the board has sent a written notification letter to the disciplined license holder. The notification letter shall:

(a) State the name of the supervising licensed behavior analyst; and

(b) Specify that the disciplined license holder shall meet with the supervising licensed behavior analyst and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the supervising licensed behavior analyst and disciplined license holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined license holder, and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;

(7) Submit the Report of Supervision to the board for approval.

(a) The liaison shall place the Report of Supervision on the agenda for review and approval at the next regularly scheduled board meeting.

(b) In the interim, the supervising licensed behavior analyst and disciplined license holder shall continue to meet;

(8) Remain available to the supervising licensed behavior analyst to provide assistance and information as needed;

(9) Report any problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising licensed behavior analyst;

(10) Review the quarterly Report of Supervision and forward to the supervision committee of the board for approval; and

(11) Meet with the supervising licensed behavior analyst and the disciplined license holder at the end of the term of supervision to summarize the supervision.

Section 15.[~~Section 16. Graduate Training.~~]Unlicensed supervisees shall: (1) Be enrolled in coursework at a Verified Course Sequence (VCS) that meets the most current coursework requirements for eligibility to sit for a Behavior Analyst Certification Board's (BACB) exam;

(2) Be supervised by an individual qualified to supervise under the BACB supervision standards;

(3) Meet the BACB's most current experience requirements for individuals accruing fieldwork hours to fulfill the eligibility requirements for a BCBAA or BCaBA certification exam;

(4) Clearly identify his or her status as an unlicensed supervisee to all clients and payors; and

(5) Give to all clients and payors the name of the supervisor responsible for his or her work.[~~Applied behavior analysis graduate students. Graduate-level applied behavior analysis students who are providing services in mental health care settings including independent practice settings shall:~~

~~(1) Be supervised by a behavior analyst licensed by the board in the state in which the training program exists, or by a licensed mental health professional approved by the training program who is affiliated with either the university training program or the practice setting;~~

~~(2) Be registered for credit in his or her course of study;~~

~~(3) Clearly identify his or her status as unlicensed trainees to all clients and payors;~~

~~(4) Give to all clients and payors the name of the licensed behavior analyst responsible for his or her work; and~~

~~(5) Not accept employment or placement to perform the same or similar activities following the completion of his or her university-sanctioned placement, regardless of the job title given, unless the student holds a license from the board~~].

Section 16.[~~Section 17.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [~~ABA-003, "Annual Report of Supervision", July 2015; and~~

~~(b)~~] ABA-002, "[~~Annual~~]Supervisory Plan", October 2021; and

(b) Form ABA-003, "Report of Supervision", October 2021[~~July 2015~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 500 Mero Street, 2 SC 32[~~911 Leawood Drive~~], Frankfort, Kentucky 40602, [~~(502) 892-4249564-3296,~~] Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at aba.ky.gov.

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:
Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/88507454480?pwd=NnAwczNBZTU5TnA3YkRvYWd1Z01MZz09
Password: 729285
Or Telephone:
Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 913047

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https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=913047

Or an H.323/SIP room system:
H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 885 0745 4480
Password: 729285
SIP: 88507454480@zoomcrc.com
Password: 729285

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319C.060(2)(a) requires the board to promulgate an administrative regulation governing the supervision of a licensed assistant behavior analyst, temporarily licensed behavior analyst, and temporarily licensed assistant behavior analyst. This administrative regulation establishes the requirements for supervision.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319C.060(2)(a)-(d).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319C.060(2)(a) requires the board to promulgate an administrative regulation governing the supervision of a licensed assistant behavior analyst, temporarily licensed behavior analyst, and temporarily licensed assistant behavior analyst. This administrative regulation establishes the requirements for supervision.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the requirements for a person to function as a supervisor in the practice of behavior analysis.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 11 licensed assistant behavior analysts, 482 licensed behavior analysts, 6 temporary behavior analysts, and 6 temporary registered telehealth providers.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will provide updated requirements and qualifications for a person to function as a supervisor, including generation of Reports of Supervision.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: None.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow supervisors and prospective supervisors to have an updated understanding of the requirements and scope of the supervisory role.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Applied Behavior Analysis Licensing Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319C.060(2)(a)-(d).

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(Amendment)

201 KAR 43:060. Complaint and disciplinary process.

RELATES TO: KRS 319C.050(4), 319C.060(2), 319C.070, 319C.110

STATUTORY AUTHORITY: KRS 319C.060(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2) requires the board to promulgate an administrative regulation governing the regulation of licensees. KRS 319C.070, 319C.050(4), and 319C.110 require the board to investigate and take disciplinary action against licensees who violate KRS Chapter 319C and the associated administrative regulations. This administrative regulation details the process by which the board completes those investigations and takes that action.

Section 1. Definitions. (1) "Act" means KRS Chapter 319C.

(2) "Board" is defined by KRS 319C.010(3).

(3) "Charge" means a specific allegation contained in a document issued by the board or hearing panel alleging a violation of a specified provision of KRS Chapter 319C or 201 KAR Chapter 43.

(4) "Complaint Committee" means the committee appointed pursuant to Section 2 of this administrative regulation.

(5) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that sets forth charges against a licensee or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(6) "Initiating complaint" means an allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in unlicensed practice or using a title without holding a license.

(7) "Order" means the whole or a part of a final disposition of a hearing.

(8) "Presiding officer" means the person appointed by the board to preside at a hearing held pursuant to KRS Chapter 13B, and shall include a hearing officer, a member or members of the hearing panel, or both.

(9) "Respondent" means the person against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint. (1) Source of initiating complaint. An initiating complaint may be initiated by the board, by the public, or by a governmental agency. A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid initiating com- plaint.

(2) Form of initiating complaint. Initiating complaints shall:

(a) Be in writing;

(b) Clearly identify the person against whom the initiating complaint is being made;

(c) Contain the date;

(d) Identify by signature the person making the initiating complaint; and

(e) Contain a clear and concise statement of the facts giving rise to the initiating complaint.

(3) Receipt of initiating complaint. An initiating complaint shall be submitted to the Board Office at the Office of Occupations and Professions.

(4) Response. A copy of the initiating complaint shall be mailed to the respondent. The respondent shall file with the board a written response to the initiating complaint:

(a) Within fifteen (15) days of the date on which the initiating complaint was mailed; or

(b) Within a specified period of time if an extension is requested in writing by the respondent and granted by the board. In order to be granted an extension, the respondent shall provide proof of good cause justifying the extension.

(5) Complaint Committee.

(a) The complaint committee shall consist of three (3) [~~no more than two (2)~~] board members appointed by the chair of the board to:

1. Review initiating complaints, responses, and investigative reports;

2. Participate in informal proceedings to resolve formal complaints; and

3. Make recommendations for disposition of initiating complaints and formal complaints to the full board.

(b) The complaint committee may be assisted by the board staff and counsel to the board.

(6) Consideration of initiating complaint. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or the complaint committee shall review the initiating complaint and response. The board, upon recommendation of the complaint committee, shall determine if an investigation is warranted, and if so, the board shall appoint an agent or representative of the board to conduct an investigation of the initiating complaint.

(7) Investigation.

(a) If the board directs that an investigation be completed, the respondent shall be inter- viewed as a part of that investigation. With the consent of the respondent, a meeting may be scheduled at which time the respondent may respond further to the allegations of the initiating complaint. The board and the respondent shall have the right to be represented at the meeting by legal counsel. The respondent's failure to submit to an interview or cooperate with an investigation shall not deprive the board of the authority to take action pursuant to paragraph (c) of this subsection.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Consideration of complaint and investigative report. Based on consideration of the com- plaint; the investigative report, if any; and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act.

1. If it is determined that the facts alleged in the initiating complaint or investigative report do not constitute a prima facie violation of KRS Chapter 319C or 201 KAR Chapter 43, the board shall notify the person or entity making the initiating complaint and

the respondent that no further action shall be taken at the present time.

2.a. If it is determined that there is a prima facie violation of KRS Chapter 319C or 201 KAR Chapter 43, the board shall issue a formal complaint against the licensee or applicant.

b. In the case of a prima facie violation of KRS 319C.020(1) and the respondent is not a licensee or an applicant, the board shall take one (1) or all of the following actions:

(i) Issue a cease and desist order;

(ii) File suit to enjoin the violator pursuant to KRS 319C.050(2); or

(iii) Seek criminal prosecution pursuant to KRS 319C.050(2).[

~~(d) If a board member participates in the review of a matter, either as a member of the complaint committee or as the investigator, that person shall not vote according to the process out-lined in paragraph (c) of this subsection. However, that person may be counted as a present member for the purposes of establishing and maintaining a quorum of the board.~~]

Section 3. Formal Complaint. If the board votes to file a formal complaint, a notice of administrative hearing shall be filed as required by KRS 13B.050.

Section 4. Formal Response. (1) Within twenty (20) days of service of the notice of administrative hearing, the respondent shall file with the board a written response to the specific allegations set forth in the notice of administrative hearing.

(2) Allegations not properly responded to shall be deemed admitted.

(3) The board may, if there is good cause, permit the late filing of a response.

Section 5. Composition of the Hearing Panel. Disciplinary actions shall be heard by a hearing officer and:

(1) The full board or a quorum of the board;

(2) A hearing panel consisting of at least one (1) board member appointed by the board; or

(3) The hearing officer alone in accordance with KRS 13B.030(1).

Section 6. Notification of Complainant. Upon final resolution of a complaint submitted pursuant to this process, the board shall notify the person or entity making the initiating complaint of the outcome of the action in writing.

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/88507454480?pwd=NnAwczNBZTU5TnA3YkRvYWd1Z01MZz09

Password: 729285

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 913047

Find local AT&T Numbers:

https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=913047

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 885 0745 4480

Password: 729285

SIP: 88507454480@zoomcrc.com

Password: 729285

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319C.060(2) requires the board to promulgate an administrative regulation governing the regulation of licensees. KRS 319C.070, 319C.050(4), and 319C.110 require the board to investigate and take disciplinary action against licensees who violate KRS Chapter 319C and the associated administrative regulations. This administrative regulation details the process by which the board completes those investigations and takes that action.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319C.060(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319C.060(2) requires the board to promulgate an administrative regulation governing the regulation of licensees. KRS 319C.070, 319C.050(4), and 319C.110 require the board to investigate and take disciplinary action against licensees who violate KRS Chapter 319C and the associated administrative regulations. This administrative regulation details the process by which the board completes those investigations and takes that action.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes the requirement that a board

member participating in the review of a matter is prohibited from voting on the matter.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 11 licensed assistant behavior analysts, 482 licensed behavior analysts, 6 temporary behavior analysts, and 6 temporary registered telehealth providers.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: None.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow licensees to have an updated understanding of the complaint review process.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Applied Behavior Analysis Licensing Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319C.060(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? None

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(Amendment)

201 KAR 43:080. Renewals.

RELATES TO: KRS 319C.050, 319C.060

STATUTORY AUTHORITY: KRS 319C.050, 319C.060(2), 319C.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060 authorizes the board to promulgate administrative regulations required to establish conditions for the renewal and reinstatement of licenses. This administrative regulation establishes procedures for the renewal of licenses.

Section 1. Renewal. (1) A behavior analyst[~~or assistant behavior analyst~~] shall biennially, on or before the last day of the calendar month during which the license was issued:

(a)[~~(1)~~] File a completed Renewal and Reinstatement Application, [~~for Licensure Renewal~~]Form ABA-004; and

(b)[~~(2)~~] Pay to the board the renewal fee established by 201 KAR 43:030.

(2) An assistant behavior analyst shall biennially, on or before the last day of the calendar month during which the license was issued:

(a) File a completed Renewal and Reinstatement Application Form ABA-004;

(b) Have a current, approved Report of Supervision and Supervisory Plan; and

(c) Pay the renewal fee established by 201 KAR 43:030.

(3) A temporary licensed behavior analyst shall, within the two (2) year period, renew their license one (1) time by:

(a) Filing a completed Renewal and Reinstatement Application, Form ABA-004;

(b) Having a current, approved Report of Supervision and Supervisory Plan; and

(c) Paying the renewal fee established by 201 KAR 43:030.

Section 2. Late Renewal. A behavior analyst or assistant behavior analyst who fails to renew his or her license on or before the last day of the calendar month during which the license was issued may submit his or her application on or before the last day of the calendar month following the month in which the license was issued if accompanied by the appropriate late fee as required by 201 KAR 43:030.

Section 3. Expiration of License. (1) A license that is not renewed before the last day of the calendar month following the calendar month during which the license was issued shall be expired and lapsed for failure to renew.

(2) Upon expiration of the license for failure to renew, a behavior analyst or assistant behavior analyst shall not practice in the Commonwealth of Kentucky.

Section 4. Reinstatement. After the last day of the calendar month following the month in which the license was issued, a person whose license has expired for failure to renew shall submit, in order to have his or her license reinstatement request considered by the Board:

(1) Payment of the reinstatement fee established by 201 KAR 43:030;

(2) Completion of the Renewal and Reinstatement Application, Form ABA-004[~~Application for License Renewal~~]; and

(3) Documentation of employment from the time of expiration of employment until the present.

Section 5. Incorporation by Reference. (1) Form ABA-004, "[~~Application for Licensure~~]Renewal and Reinstatement Application", October 2021[~~July 2015~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 500 Mero Street, 2SC 32[~~911 Leawood Drive~~], Frankfort, Kentucky 40601, (502) 892-4249[~~564-3296~~], Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at aba.ky.gov.

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/88507454480?pwd=NnAwczNBZTU5TnA3YkRvYWd1Z01MZz09

Password: 729285

Or Telephone:

Dial:

USA 713 353 0212

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103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 885 0745 4480

Password: 729285

SIP: 88507454480@zoomcrc.com

Password: 729285

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319C.060 authorizes the board to promulgate administrative regulations required to establish conditions for the renewal and reinstatement of licenses. This administrative regulation establishes procedures for the renewal of licenses.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319C.050, 319C.060(2), and 319C.120.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319C.060 authorizes the board to promulgate administrative regulations required to establish conditions for the renewal and reinstatement of licenses. This administrative regulation establishes procedures for the renewal of licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates and clarifies the requirements for licensure renewal, and provides an updated application.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 11 licensed assistant behavior analysts, 482 licensed behavior analysts, 6 temporary behavior analysts, and 6 temporary registered telehealth providers.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Licensees will be required to complete an updated renewal form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No additional cost to affected individuals.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow supervisors and prospective supervisors to have an updated understanding of the requirements for license renewal.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Applied Behavior Analysis Licensing Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this

administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319C.050, 319C.060(2), and 319C.120.

(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? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(Amendment)

201 KAR 43:100. Telehealth and telepractice.

RELATES TO: KRS 319C.140(2)

STATUTORY AUTHORITY: KRS 319C.140(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.140(2) requires the board to promulgate administrative regulations related to utilization of telehealth as a means of healthcare delivery. This administrative regulation establishes the requirements for telehealth and telepractice in applied behavior analysis.

Section 1. Requirements for Licensees Providing Applied Behavior Analytic Services via Telehealth. (1) A licensee who provides applied behavior analytic services via telehealth shall:

(a) Maintain competence with the technologies utilized, including understanding and adequately addressing the actual and potential impact of those technologies on clients, supervisees, or other professionals;

(b) Maintain compliance with KRS Chapter 319C, 201 KAR Chapter 43, and all other applicable federal, state, and local laws;

(c) At the onset of the delivery of care via telehealth, identify appropriate emergency response contacts local to the client so that those contacts shall be readily accessible in the event of an emergency;

(d) Protect and maintain the confidentiality of data and information in accordance with all applicable federal, state, and local laws; and

(e) Dispose of data and information only in accordance with federal, state, and local law and in a manner that protects the data and information from unauthorized access.

(2) If applied [~~Applied~~]behavior analysis commences[~~with a client shall not commence~~] via telehealth,[~~.~~

~~(a) An initial, in-person meeting for the licensee and client who prospectively utilize telehealth shall occur.~~

~~(b)~~] The licensee shall, at the initial[~~, in-person~~] meeting with the client:

(a)[~~1.~~] Make reasonable attempts to verify the identity of the client;

(b)[~~2.~~] Obtain alternative means of contacting the client other than electronically;

(c)[~~3.~~] Provide to the client alternative means of contacting the licensee other than electronically;

(d)[~~4.~~] Document if the client has the necessary knowledge and skills to benefit from the type of telehealth to be provided by the licensee; and

(e)[~~5.~~] Inform the client in writing about and obtain the client's informed written consent regarding:

1.[~~a.~~] The limitations of using technology in the provision of applied behavior analytic services;

2.[~~b.~~] Potential risks to confidentiality of information due to technology in the provision of applied behavior analytic services;

3.[~~c.~~] Potential risks of disruption in the use of telehealth technology;

4.[~~d.~~] When and how the licensee will respond to routine electronic messages;

5.[~~e.~~] In what circumstances the licensee will use alternative communications for emergency purposes;

6.[~~f.~~] Who else may have access to client communications with the licensee;

7.[~~g.~~] How communications can be directed to a specific licensee;

8.[~~h.~~] How the licensee stores electronic communications from the client; and

9.[~~i.~~] That the licensee or client may elect to discontinue the provision of services through telehealth at any time.

Section 2. Jurisdictional Considerations. (1) A person providing applied behavior analytic services via telehealth to a person physically located in Kentucky while services are provided shall be licensed by the board.

(2) A person providing applied behavior analytic services via telehealth from a physical location in Kentucky shall be licensed by the board and may be subject to licensure requirements in other states where the services are received by the client.

Section 3. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services shall not:

(1) Engage in false, misleading, or deceptive advertising; and

(2) Split fees.

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/88507454480?pwd=NnAwczNBZTU5TnA3YkRvYWd1Z01MZz09

Password: 729285

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Dial:
USA 713 353 0212
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Conference code: 913047

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Or an H.323/SIP room system:
H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 885 0745 4480
Password: 729285
SIP: 88507454480@zoomcrc.com
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Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319C.140(2) requires the board to promulgate administrative regulations related to utilization of telehealth as a means of healthcare delivery. This administrative regulation establishes the requirements for telehealth and telepractice in applied behavior analysis.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319C.140(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319C.140(2) requires the board to promulgate administrative regulations related to utilization of telehealth as a means of healthcare delivery. This administrative regulation establishes the requirements for telehealth and telepractice in applied behavior analysis.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

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

(a) How the amendment will change this existing administrative regulation: The amendment eliminates the requirement that an initial meeting be conducted in-person.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 11 licensed assistant behavior analysts, 482 licensed behavior analysts, 6 temporary behavior analysts, and 6 temporary registered telehealth providers

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation will provide updated telehealth requirements that licensees will need to become familiar with

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: None.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow supervisors and prospective supervisors to have an updated understanding of the requirements for telehealth.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Applied Behavior Analysis Licensing Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319C.140(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? None

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

Section 1. Definitions. (1) "Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are fishing license exempt as established in KRS 150.170.

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

(3) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(4) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.

(5) "Catfish" means a blue catfish, channel catfish, or flathead catfish.

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

(7) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(8) "Pneumatic arrow launching device" means a device designed to fire an arrow through the use of a compressed air cartridge.

(9) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(10) "Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(11) "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

(12) "Trophy catfish" means a:

(a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or

(b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

Section 2. General Provisions. (1) The daily creel limit for catfish using any non-traditional fishing method shall not include more than one (1) trophy catfish of each species, except as established in Section 7 (3) of this administrative regulation.

(2) The possession limit for paddlefish and trophy catfish shall be two (2) times the daily creel limit for each species.

(3) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

Section 3. Skin Diving, Scuba Diving, and Underwater Spear Fishing. (1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department's Division of Law Enforcement; or

(b) The local conservation officer who is assigned to the particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated cove as established in subsection (4) of this section shall display an international diving flag as established in 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand held spear or mechanically-propelled spear shall be legal throughout the year in lakes 1,000 surface acres in size or larger, as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.

(a) An angler who is spearing fish shall:

1. Be completely submerged in the water where spearing takes place; and

2. Only spear rough fish.

(b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 4. Sport Fishing Trotlines, Jugging, and Setlines. (1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the customer identification number found on the current sport fishing license of the person using it.

(2) Each trotline, jug line, or setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if it is not:

(a) Properly labeled or tagged; or

(b) Checked or baited at least once every twenty-four (24) hours.

(4) An angler shall not use more than:

(a) Two (2) sport fishing trotlines;

(b) Twenty-five (25) setlines; or

(c) Fifty (50) jug lines.

(5) Multiple anglers in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) An angler using a sport fishing trotline shall:

(a) Set the trotline at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) A sport fishing trotline, jug line, or setline shall not be used in the waters established in paragraphs (a) through (d) of this subsection:

(a) In the Tennessee River within 700 yards of Kentucky Dam;

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area lakes, Ballard County;

2. Peal Wildlife Management Area lakes, Ballard County; and

3. Swan Lake Wildlife Management Area lakes, Ballard County; or

(d) In the areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K & I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9) An angler using a trotline, jug line, or setline shall follow all sport fish daily creel limits and size limits as established in 301 KAR 1:201.

Section 5. Temporary Aquatic Areas and Temporary Pools. (1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where anglers may take rough fish by any method except:

(a) Poison;

(b) Electrical devices;

(c) Firearms; or

(d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person with a valid commercial fishing license may use nets and seines if the nets and seines are appropriately tagged, as established in 301 KAR 1:146.

(4) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 6. Gigging and Snagging. (1) Gigging and snagging season shall be February 1 through May 10, except as established in subsections (7) and (9) of this section.

(2) A person shall not:

(a) Gig or snag a sport fish, as established in 301 KAR 1:060, except as established in subsections (7) and (9) of this section;

(b) Gig or snag from a platform;

(c) Gig from a boat in any lake less than 500 surface acres;

(d) Gig at night from a boat; or

(e) Snag from a boat.

(3) A snagging rod shall be equipped with:

(a) Line;

(b) Guides;

(c) A reel; and

(d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used while snagging in:

1. The Green River and its tributaries; or

2. The Rolling Fork River and its tributaries.

(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established in subsections (7) and (9) of this section.

(5) A person shall not gig or snag in the areas or bodies of water established in paragraphs (a) through (f) of this subsection:

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

(d) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson Counties;

(e) Cave Run Lake; or

(f) Within 200 yards of any dam on a river or stream, except as established in subsection (7) of this section.

(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:

(a) For twenty-four (24) hours a day from January 1 through May 31; and

(b) From sunset to sunrise from June 1 through December 31.

(8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.

(9) A person may snag sport fish or rough fish year-round in the section of the Tennessee River from the Interstate 24 bridge to the Ohio River.

(10) A person shall not snag on the Tennessee River:

(a) Under the U.S. 62 bridge;

(b) Under the P & L Railroad bridge; or

(c) From the fishing piers located below the U.S. 62 bridge.

(11) There shall not be a daily creel limit for rough fish except:

(a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp;

(b) The daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp; and

(c)1. The statewide daily creel limit for snagging paddlefish shall be two (2), in all areas outside those established in paragraphs (a) and (b) of this subsection; and

2. In an area established in paragraph (a) or (b) of this subsection, up to eight (8) paddlefish may be taken.

(12) A person shall immediately retain, and not release or cull, any gigged or snagged paddlefish.

(13) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(14) All gigged or snagged rough fish in the Cumberland River below Barkley Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(15) A person shall immediately cease snagging if:

(a) A daily creel limit of paddlefish is reached;

(b) A daily creel limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8); or

(c) A trophy catfish is snagged.

Section 7. Grabbing. (1) The grabbing season for rough fish shall be June 1 to August 31 during daylight hours.

(2) Grabbing shall be permitted in all waters.

(3) The daily creel limit for grabbing shall be fifteen (15) fish, no more than five (5) of which may be catfish, except anglers grabbing at Barren River Lake, Dewey Lake, Fishtrap Lake, or Taylorsville Lake, may only harvest one (1) blue or channel catfish over twenty-five (25) inches.

Section 8. Bow Fishing. (1) An angler using archery equipment, a crossbow, or a pneumatic arrow launching device shall not take:

(a) Sport fish;

(b) Alligator gar;

(c) More than five (5) catfish daily;

(d) More than two (2) paddlefish daily; or

(e) Lake sturgeon.

(2) Any paddlefish or catfish shot with archery equipment, a crossbow, or a pneumatic arrow launching device shall:

(a) Be immediately retained, and not released or culled; and

(b) Count toward a person's daily limit.

(3) Bow fishing shall be open statewide, except:

(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;

(b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream; [~~or~~]

(c) In the following lakes:

1. Carpenter Lake (Daviess County);

2. Clear Creek Lake (Bath County);

3. Greenbo Lake (Greenup County);

4. Lake Carnico (Nicholas County); and

5. Lake Reba (Madison County); or

(d) From a boat in restricted areas below navigation, power generating, or flood control dams.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: October 26, 2021 at 2:42 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022 at 9:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through January 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky and to provide for reasonable recreational fishing opportunities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by authorizing the methods used to take fish, the areas open for such take, and the seasons and limits to be used when taking fish by nontraditional methods.

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

(a) How the amendment will change this existing administrative regulation: This amendment will prohibit bowfishing at Carpenter Lake (Daviess County), Clear Creek Lake (Bath County), Greenbo Lake (Greenup County), Lake Carnico (Nicholas County), and Lake Reba (Madison County).

(b) The necessity of the amendment to this administrative regulation: This amendment will address two issues on a few small, state-owned and managed lakes. The first is user conflicts between bowfishers operating generators and lights on lakes where homeowners live along the shoreline. KDFWR has received complaints from homeowners that lights are shining in their house and loud generator noise is keeping them up at night. The second issue is bowfishing harvest of Department-stocked grass carp that are used to control vegetation in several of these lakes. The grass carp are critical to keep nuisance vegetation from taking over the lake, and removal of the grass carp by bowfishers is detrimental to vegetation management.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all anglers wanting to bowfish on these five lakes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers using bow fishing equipment will need to utilize one of the many other lakes in the state open to bowfishing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Protection of the department-stocked grass carp will ensure that these lakes remain open to other recreational fishing and boating use. User conflicts will be eliminated in cases where bowfishing is occurring on these lakes.

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

(a) Initially: There will be no initial cost to the department to implement this administrative regulation.

(b) On a continuing basis: There will be no cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No increase in fees or funding is needed to fund this program.

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because all anglers using nontraditional fishing methods must abide by the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The department's Fisheries and Law Enforcement Divisions will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.440, 150.470, and 235.280.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

TRANSPORTATION CABINET
Department of Highways
Division of Maintenance
(Amendment)

603 KAR 5:150. Encroachment permits.

RELATES TO: KRS 176.050(1)(i), 177.047, 177.103, 177.106

STATUTORY AUTHORITY: KRS 176.050(1)(i), 177.047, 177.106

NECESSITY, FUNCTION, AND CONFORMITY: KRS 176.050(1)(i) requires the Department of Highways to promulgate administrative regulations for the care and maintenance of roads after they have been constructed. KRS 177.047 requires that any person who intends to lay conduit, pipes, poles, or wires over or under a city street that is part of the state-maintained system of highways do so in accordance with administrative regulations of the Department of Highways. KRS 177.106 requires any person to obtain a permit for any encroachment to the right-of-way of any state highway. This administrative regulation provides the policies and procedures in maintenance of highways to allow encroachments onto a highway or right-of-way.

Section 1. Incorporation by Reference. (1) Kentucky Transportation Cabinet, Permits Manual, as revised and effective September 17, 2021 [~~May 2, 2019~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law Monday through Friday between 8 a.m. and 4:30 p.m. at:

(a) Kentucky Transportation Cabinet, Office of Human Resource Management, Organizational Management Branch, Frankfort, Kentucky 40622;

(b) Kentucky Transportation Cabinet, Division of Maintenance, Permits Branch, 200 Mero Street, 3rd Floor East, Frankfort, Kentucky 40622; or

(c) Any of the twelve (12) highway district offices.

JIM GRAY, Secretary
JAMES BALLINGER, P.E., State Highway Engineer
APPROVED BY AGENCY: November 12, 2021
FILED WITH LRC: November 15, 2021 at 10:28 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. EST on January 25, 2022, via video teleconference. Members of the public wishing to attend may utilize the following link:

Join from PC, Mac, Linux, iOS or Android:
https://bluejeans.com/683098553/8345

Or Telephone:
+1.408.419.1715 (United States (San Jose))
+1.408.915.6290 (United States (San Jose))

Meeting ID: 683 098 553
Participant Passcode: 8345

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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Larisa Plecha, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, Fax (502) 564-5238, email larisa.plecha@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larisa Plecha

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines and requirements of obtaining an encroachment permit onto the Department of Highways right-of-way.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 176.050(1)(i).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 176.050(1)(i) by providing the requirements for encroachment permits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 176.050(1)(i).

(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: By providing updates to the Incorporation by Reference section that is currently outdated.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide updates to the Incorporation by Reference section that is currently outdated.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to KRS 176.050(1)(i) by providing the requirements for encroachment permits.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by providing updates to the Incorporation by Reference section that is currently outdated.

(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 Transportation Cabinet, Department of Highways, Division of Maintenance, Permits Branch along with all individuals and businesses intending to apply for an encroachment permit.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Each of the regulated entities will have to comply with the updated Permits Manual.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no additional costs or fees as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities: The Department of Highways, individuals, and businesses will now have up-to-day information in the Incorporation by Reference section.

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

(a) Initially: There is no cost associated with implementing this administrative regulation.

(b) On a continuing basis: There is no cost associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road Fund.

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

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

(9) TIERING: Is tiering applied? No, all encroachment permit applicants will be treated 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? KYTC Department of Highways, Division of Maintenance

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 176.050(1)(i), 177.047, 177.106

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation should cause no effect on the expenditures and revenues of a state or local government agency.

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation is not expected to generate costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to generate costs.

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

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): No expenditures will be generated by this program.

Other Explanation: n/a

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 4:415. Direct shipper license.

RELATES TO: KRS 243.027, 243.028, 243.029[~~, 243.030(33), 244.050, 244.440, 244.585~~]

STATUTORY AUTHORITY: KRS 241.060, 243.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.027(4) requires the Department of Alcoholic Beverage Control to set forth the requirements and the form for a direct shipper license application.[~~ KRS 243.027(3)(c) requires the Department to establish through regulation what information the Department determines to be necessary to implement and administer the direct shipper license. KRS 243.027(6)(a) requires the department to reduce unlicensed deliveries and shipments of alcoholic beverages in the state.~~] In relation to the direct shipper license, KRS 241.060(1) authorizes the Department only to promulgate an[~~reasonable~~] administrative regulation[~~s~~] to establish the license application[~~governing procedures relative to application for licenses as well as the supervision and control of the trafficking of alcoholic beverages~~]. This administrative regulation establishes the direct shipper license application[~~requirements for the direct shipper license and the privileges and responsibilities of a direct shipper license~~].

Section 1. Qualifications. To qualify for a direct shipper license, the[~~an~~] applicant shall:

(1) Hold a current license, permit, or other authorization to manufacture alcoholic beverages in the state where it is located or a current license in this state under KRS 243.212 or 243.215 to supply alcoholic beverages;

(2) Provide[~~Hold~~] a current license, permit, or other authorization to manufacture, store, or supply alcoholic beverages in the state where the applicant is located[~~under the Federal Alcohol Administration Act as follows:~~

~~(a) If a manufacturer other than a brewery, a basic permit to produce or manufacture beverage alcohol;~~

~~(b) If a manufacturer that is a brewery, a brewer's notice to produce or manufacture malt beverages; or~~

~~(c) If an importer, wholesaler, or distributor licensed as a supplier under KRS 243.212 or 243.215, a basic importer's or wholesaler's permit for the purpose of directly shipping only those products for which the applicant is designated the primary source of supply under the applicant's supplier license~~];

(3) Complete the online direct shipper license application via the department's licensing portal at https://abcportal.ky.gov/BELLEExternal[~~https://abc-portal.ky.gov/s/kyabcnewlicensetype~~];

(4) Provide the address [~~and a description~~]of the applicant's premises[~~ from which the applicant will ship alcoholic beverages to consumers, and documentation showing ownership or possession of the premises under a written agreement~~]; and

(5) Pay the annual license fee established in KRS 243.030(33).[~~;~~

~~(6) Disclose all of the applicant's current alcohol-related licenses, permits, and authorizations granted by this state, the federal government, and, if applicable, the state in which the applicant manufactures alcoholic beverages;~~

~~(7) Disclose all convictions for violations of alcoholic beverage laws, or misdemeanors directly or indirectly attributable to the use of alcoholic beverages or the use or trafficking in controlled substances, in the last two (2) years in any state, by the applicant or the applicant's officers, directors, or members or managers as defined in KRS 275.015;~~

~~(8) Disclose all convictions or sentences served for felonies of any kind by the applicant or the applicant's officers, directors, or members or managers as defined in KRS 275.015, in the last five (5) years;~~

~~(9) Complete all registration requirements with respect to payment of any applicable excise tax, state or local sales or use tax, local regulatory license fee, or other tax owed in this state to directly ship alcoholic beverages to consumers in this state; and~~

~~(10) Consent to the jurisdiction of the Commonwealth of Kentucky for purposes of enforcement of KRS Chapters 241 to 244.~~

~~Section 2. Prohibited substantial interests. A direct shipper license applicant and direct shipper licensee shall comply with 804 KAR 4:015 and for that purpose shall be considered a "manufacturer" as defined in 804 KAR 4:015.~~

~~Section 3. Licensed Premises.~~

~~(1) The licensed premises described in a direct shipper license application may be different from the premises where the applicant is licensed, permitted, or otherwise authorized to manufacture or supply alcoholic beverages.~~

~~(2) If the direct shipper licensee uses or intends to use the licensed premises described in the direct shipper license application for storage of alcoholic beverages incidental to shipment, the premises shall also comply with the laws of the jurisdiction in which it is located in order to store the alcoholic beverages to be shipped.~~

~~(3) Direct shipper licensees may engage in transportation of their products as permitted by their license, permit, or authorization to manufacture or supply alcoholic beverages.~~

~~Section 4. Minimum Production. A manufacturer that is a direct shipper license applicant or a direct shipper licensee, and who intends to ship wine or distilled spirits, shall meet the minimum quantities of production set forth in KRS 243.155(2) and KRS 243.120(2)(a) as applicable.~~

~~Section 5. Brand Registration. In accordance with 804 KAR 4:410, a direct shipper licensee shall register with the department all brands the licensee intends to ship to consumers in this state.~~

~~Section 6. Independent Contractors. A direct shipper licensee shall not contract with an independent contractor or agent who has, or would have, a substantial interest prohibited under 804 KAR 4:015 if the independent contractor or agent is treated as a manufacturer as defined in 804 KAR 4:015.~~

~~Section 7. Records. A direct shipper licensee shall comply with the record retention and audit requirements set forth in 804 KAR 4:100, except a licensee shall maintain such records for a minimum of three (3) years. At the request of the department, the licensee shall make available for inspection all records regarding direct shipment to Kentucky consumers.~~

~~Section 8. Minimum Price. A direct shipper licensee shall sell alcoholic beverages at a price no less than the cost of production in accordance with KRS 244.050.~~]

Section 2.[~~Section 9.~~] Incorporation by Reference. (1) "Online Direct Shipper License Application", October 2021[~~December 2020~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE 33, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ALLYSON C TAYLOR, COMMISSIONER
RAY PERRY, Secretary

APPROVED BY AGENCY: October 25, 2021

FILED WITH LRC: October 26, 2021 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. EST on Monday, January 24, 2022 at 500 Mero Street, Room 127CW, Frankfort, Kentucky 40601. The physical location listed in this notice is a state government office, and the public hearing will be held at this location if the location is open to in-person services on January 24, 2022, but if the location is closed to in-person services on January 24, 2022, then the public hearing on this administrative regulations shall be held by video teleconference at 9:00 AM on January 24, 2022. The primary location for the video teleconference will be at 500 Mero Street, Room 127CW and a link will be provided on the Web site of the Department of Alcoholic Beverage Control, http://abc.ky.gov, by which members of the public will be able to view the video teleconference of the public hearing remotely. Members of the public wishing to attend may utilize the link provided on the Department's Web site. 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Joshua Newton, General Counsel, Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, phone (502) 782-0770, fax (502) 564-4850, email Joshua.Newton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joshua Newton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation outlines the changes required by House Bill 415 of the 2021 Regular Session of the Kentucky General Assembly in which limitations were placed on the Department of Alcoholic Beverage Control's ability to regulate direct shipment of alcohol to consumers in and outside of Kentucky. Specifically, this amendment focuses on the requirements for licensing as outlined in the latest legislation.

(b) The necessity of this administrative regulation: KRS 243.027(4) requires that the department promulgate a regulation to set forth the requirements for a direct shipper license application to include only the applicant's address and a copy of an out of state license. Therefore, a majority of the previously approved regulation requires deletion.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.027(4) requires that the department promulgate a regulation to set forth the requirements for a direct shipper license application to include only the applicant's address and a copy of an out of state license. KRS 241.060(1) specifies that no other regulation related to direct shipping may be promulgated. Therefore, a majority of the previously approved regulation requires deletion.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 241.060(1) specifically prohibits the Department of Alcoholic Beverage Control from regulating direct shipping licensees.

Deletion of previous regulation is mandated to comply with the statute.

(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 deletes all previous regulation related to direct shipper applications except for the applicant's address and out of state license where necessary.

(b) The necessity of the amendment to this administrative regulation: HB 415 of the 2021 Regular Session of the General Assembly requires the department to make these changes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.027(4) requires that the department promulgate a regulation to set forth the requirements for a direct shipper license application to include only the applicant's address and a copy of an out of state license. KRS 241.060(1) specifies that no other regulation related to direct shipping may be crafted. Therefore, a majority of the previously approved regulation requires deletion.

(d) How the amendment will assist in the effective administration of the statutes: The amendment deletes regulatory language specifically prohibited by the legislature.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The direct shipper license affects an unknown number of individuals, businesses, and organizations. However, this amendment will not affect current or future applicants beyond outlining the two pieces of information they must provide.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This amendment will not affect current or future applicants beyond outlining the two pieces of information they must provide. Currently licensed businesses will be required to do nothing new as a consequence of this regulation. New applicants will be required to provide less information under this amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Compliance with this administrative regulation will cost each entity at least the amount of the application fee under KRS 243.030(33). The amendment does not change what an applicant pays.

(c) As a result of compliance, what benefits will accrue to the entities: This amendment will provide no benefit to the entities other than requiring that they provide less documentation for the license application.

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

(a) Initially: Changes to the licensing system have been completed in house with no quantifiable costs to the department.

(b) On a continuing basis: There are no anticipated additional costs related to this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this administrative regulation will be funded by the statutory licensing fees paid by applicants under this regulation. The amendment itself will require no additional or separate funding for implementation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this will affect all regulated entities equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Alcoholic Beverage Control and local Alcoholic Beverage Control administrators are affected generally by the licensing of direct to consumer shippers. However, this amendment will have no changed effect on the state or local government entities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 243.027(4), KRS 241.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment will generate no new revenues for state or local governments.

(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 will generate no new revenues for state or local governments in subsequent years.

(c) How much will it cost to administer this program for the first year? Costs to administer this program are currently unknown. The Department will have costs associated with modification and maintenance of the online direct shipper application and database for accepting applications. The Department will also have unknown costs to develop enforcement protocols and procedures and enforce the regulation. The Department does not know if these costs will exceed current budgetary estimates. The specific amendment will not change the costs to administer the direct to consumer licensing of applicants.

(d) How much will it cost to administer this program for subsequent years? Costs to administer this program in the future are currently unknown.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(Amendment)

806 KAR 17:300. Provider agreement and risk-sharing agreement filing requirements.

RELATES TO: KRS 304.17A-150, 304.17A-235, 304.17A-500, 304.17A-527, 304.17A-530,304.17A-532, 304.17A-560, 304.17A-575, 304.17A-578, 304.17A-728, 304.17C-060, 304.17C-070, 304.99

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-527(1), 304.17C-060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner [~~executive director~~] to promulgate reasonable administrative regulations necessary to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-527(1) and KRS 304.17C-060(1) authorize[~~require~~] the Commissioner [~~Department~~] to promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements. This administrative regulation establishes the filing requirements of provider

agreements, subcontract agreements, and risk sharing arrangements.

Section 1. Definitions.

(1) "Provider agreement" means a contract between an insurer offering a managed care plan and a provider for the provision of health care services.

(2) "Subcontract agreement" means a contract for the provision of health care services to:

An enrollee, which shall be [~~is~~] negotiated between a participating health care provider with a managed care plan and a nonparticipating provider with a managed care plan; or

(b) A covered person, which shall be [~~is~~] negotiated between a risk sharing entity through a risk sharing arrangement, as identified in KRS 304.17A-500(13), and a provider.

Section 2. Filing Requirements. (1) An insurer, managed care plan, and limited health service benefit plan shall file a sample copy of the following with the commissioner at least sixty (60) days before its use:

(a) Provider agreement;

(b) Risk sharing arrangement; and

(c) Subcontract agreement.

(2) A filing pursuant to subsection (1) of this section shall:

(a) Include:

1. A compensation arrangement, including a description of the:

a. Payment methodology; and

b. Payor as defined in the agreement;

2. Any attachment, exhibit, or addendum to the items listed in subsection (1) of this section;

3. A completed and signed Face Sheet and Verification Form HIPMC-F1, incorporated by reference in 806 KAR 14:007[~~17:005~~]; and

4. A filing fee, including:

a. Twenty-five (25) dollars for a provider agreement or subcontract agreement filing; or

b. Fifty (50) dollars for a risk sharing arrangement filing; and

(b)1. Not be considered complete until the information required by paragraph (a) of this subsection is received by the department; and

2. Be disapproved if a complete filing is not received within sixty (60) days of the date of filing.

(3) If a managed care plan, insurer, or limited health service benefit plan amends an existing provider agreement, subcontract agreement, or risk sharing agreement that was previously filed with the commissioner, affecting any requirements of this administrative regulation, the managed care plan shall submit:

(a) An amended filing at least sixty (60) days before its use; and

(b) A letter that identifies and explains each amendment.

(4) The failure of a managed care plan, insurer, or limited health service benefit plan to file a sample copy of a provider agreement, subcontract agreement, or risk sharing agreement may result in imposition of a civil penalty in accordance with KRS 304.99.

(5) An insurer issuing, delivering, or renewing a limited health service benefit plan shall complete and attach Form HL-F11, Health Summary Sheet – Form Filings, incorporated by reference in 806 KAR 14:007 [~~HIPMC-F37, Limited Health Service Benefit Plan Summary Sheet - Form Filings (07/02)~~], to each limited health service benefit plan filed with the commissioner.

Section 3. Provider Agreement Requirements. (1) The sample copy of a provider agreement for an insurer or managed care plan filed with the commissioner shall:

(a) Comply with the requirements of KRS 304.17A-527(1);

(b) Comply with the requirements of KRS 304.17A-728; [~~and~~]

(c) Comply with the requirements of KRS 304.12-237, as applicable; and

(d) Not include a:

1. Most-favored nation provision in accordance with KRS 304.17A-560;

2. Limitation on disclosure provision in accordance with KRS 304.17A-530;

3. Condition of participation provision in accordance with KRS 304.17A-150(4); and

4. Mandatory use of hospitalist provision in accordance with KRS 304.17A-532(2).

(2) The sample copy of a provider agreement for a limited health service benefit plan filed with the commissioner shall:

(a) Comply with the requirements of KRS 304.17C-060(1);

(b) Be governed by Kentucky law; and

(c) Not include a limitation on disclosure provision in accordance with KRS 304.17C-070.

Section 4. Subcontract Agreement Requirements. A sample copy of a subcontract agreement that is part of a provider agreement or risk sharing arrangement shall:

(1) Be filed with the commissioner by the managed care plan, limited health service benefit plan, or insurer in conjunction with the provider agreement or risk sharing arrangement;

(2) Meet applicable requirements of Section 3 of this administrative regulation; and

(3) Meet the requirements of KRS 304.17A-527(2) or 304.17C-060(3), as applicable.

Section 5. Risk Sharing Arrangement Requirements. (1) The sample copy of a risk sharing arrangement filed with the commissioner shall:

(a) Meet the requirements of Section 3 of this administrative regulation;

(b) Include a Risk Sharing Arrangement Information Sheet, HIPMC-R1, incorporated by reference in Section 6 of this administrative regulation[~~incorporated by reference in 806 KAR 17:005~~]; and

(c) Meet the requirements of KRS 304.17A-527(2) or 304.17C-060(3), as applicable.

(2) On or before September 1 of each calendar year, an insurer, managed care plan, or limited health services benefit plan shall file with the commissioner the HIPMC-R1, incorporated by reference in Section 6 of this administrative regulation[~~806 KAR 17:005~~], for each risk sharing arrangement currently effective.

Section 6. Incorporation by Reference. (1) HIPMC-R1, Risk Sharing Arrangement Information Sheet, 10/2021 [~~"Limited Health Service Benefit Plan Summary Sheet - Form Filings HIPMC-F37", 07/18~~]-], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero Street [~~215 West Main Street~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's Web site at https://insurance.ky.gov/ppc/CHAPTER.aspx [~~http://insurance.ky.gov~~].

SHARON P. CLARK, Commissioner
RAY A. PERRY, Secretary

APPROVED BY AGENCY: November 5, 2021

FILED WITH LRC: November 12, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on January 21, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 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 below.

CONTACT PERSON: Abigail Gall, Regulations Coordinator, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of: This administrative regulation establishes the filing requirements of provider agreements, subcontractor agreements, and risk sharing arrangements.

(a) What this administrative regulation does: This administrative regulation provides information to insurers relating to the requirements of provider agreements, subcontractor agreements, and risk sharing arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information insurers relation to the requirements of provider agreements, subcontractor agreements, and risk sharing arrangements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 304.2-110, which authorizes the Commissioner to promulgate regulations necessary for or as an aid to the effectuation of any provision of the Insurance Code. More specifically, KRS 304.17A-527(1) and KRS 304.17C-060(1) require the Commissioner to promulgate administrative regulations regarding the manner and form of required filings of sample copies of providers agreements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist health insurers by providing the requirements of provider agreements, subcontractor agreements, and risk sharing arrangements.

(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 regulation will incorporate Form HIPMC-R1, Risk Sharing Arrangement Information Sheet, from 806 KAR 17:005, in order to allow for the repeal 806 KAR 17:005. There are also drafting and technical amendments to comply with KRS Chapter 13A.

(b)The necessity of the amendment to this administrative regulation: The necessity of this amendment is to incorporate the above-referenced form, in order to allow for the repeal 806 KAR 17:005, and to ensure the regulation cites to the correct forms in 806 KAR 14:007. The forms referenced and incorporated in this regulation are required to be filed as part of the process and requirements set forth in this regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-527(1) and KRS 304.17C-060(1) both set forth filing requirements for provider agreements, subcontractor agreements, and risk sharing arrangements. Each statute also authorizes the commissioner to promulgate administrative regulations to prescribe the manner and forms in which an insurer shall meet filing requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment prescribes a new form for insurers that enter into provider agreements, subcontractor agreements, and risk sharing arrangements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any health insurer offering managed care plans or limited health services benefit plan.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The amendment to this regulation does not alter or change the requirements or filing process for insurers. An insurer, managed care plan, and limited health service benefit plan shall file a sample copy of the information prescribed in Section 2 of this administrative regulation with the commissioner at least sixty (60) days before its use. If an insurer is filing an amendment, they must abide by the requirements in Section 2(3). An insurer issuing, delivering, or renewing a limited health service benefit plan shall complete and attach Form HL-F11, Health Summary Sheet – Form Filings, incorporated by reference in 806 KAR 14:007. Any insurer partaking in a risk sharing arrangement must meet the requirements set forth in Section 5.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Insurers will be required to submit the prescribed fees with the specified filings to the Commissioner. The amendment to this regulation does not set forth any new fees.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance with this administrative regulation, insurers will also ensure compliance with the statutory requirements of KRS 304.17A-527 and KRS 304.17C-060.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an ongoing cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase of fees will not be necessary because additional personnel is likely unnecessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this regulation does not prescribe any new fees for these filings. This amendment does not establish any new fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering does not apply; depending on the submission, any health insurer offering a managed care plan or limited health services benefit plan shall file the appropriate forms and copies as prescribed in this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance will be impacted as the entity implementing of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), KRS 304.17A-527(1), and KRS 304.17C-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. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first

year? This administrative regulation will not have a cost to implement in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have a cost to administer subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: As the amendments to this administrative regulation simply clarify an existing process, this administrative regulation will not have a fiscal impact on the Department of Insurance.

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(Amendment)

806 KAR 17:575. Pharmacy benefit managers.

RELATES TO: KRS 304.1-050, 304.2-160, 304.2-165, 304.9-020, 304.17A-161, 304.17A-162

STATUTORY AUTHORITY: KRS 304.2-110, 304.2-160, 304.2-165, 304.9-020, 304.17A-161, 304.17A-162

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes [~~provides that~~] the commissioner to promulgate [~~may make~~] reasonable administrative regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-162 requires the department to promulgate an administrative regulation [~~regulations~~] to establish [~~establishing~~] the manner in which a pharmacy benefit manager shall respond to an appeal regarding maximum allowable cost pricing, the manner in which a pharmacy benefit manager shall make available the sources for drug pricing data to contracted pharmacies [~~makes available to contracted pharmacies information regarding sources for drug price data~~], a comprehensive list of drugs subject to maximum allowable cost and the actual maximum allowable cost for each drug, and weekly list updates [~~updates to the list~~]. KRS 304.2-160, 304.2-165, 304.9-020, 304.17A-161, and 304.17A-162 together authorize the department to promulgate an administrative [~~provide authority for the department's~~] regulation to establish the specific listing requirements and appeal processes related to maximum allowable cost pricing for pharmacy benefit managers [~~of pharmacy benefit managers and the specific maximum allowable cost pricing and appeal process set forth in this administrative regulation~~]. This administrative regulation establishes [~~the process for a pharmacy benefit manager's maximum allowable cost appeals process,~~] the process for the department's review of a complaint associated with a maximum allowable cost appeal[~~.~~] and the requirements for the cost listings made available by a pharmacy benefit manager.

Section 1. Definitions. (1) "Contracted pharmacy" or "pharmacy" is defined by KRS 304.17A-161(1).

(2) "Department" is defined by KRS 304.1-050(2).

(3) "Maximum Allowable Cost" is defined by KRS 304.17A-161(3).

(4) "Pharmacy Benefit Manager" is defined by KRS 304.17A-161(4).

Section 2. Maximum Allowable Cost Pricing Appeal Process.

(1) A pharmacy benefit manager shall establish a maximum allowable cost pricing appeal process where a contracted pharmacy or the pharmacy's designee may appeal if:

(a) The maximum allowable cost established for a drug reimbursement is below the cost at which the drug is available for purchase by pharmacists and pharmacies in Kentucky from national or regional wholesalers licensed in Kentucky by the Kentucky Board of Pharmacy; or

(b) The pharmacy benefit manager has placed a drug on the maximum allowable cost list in violation of KRS 304.17A-162(8).

(2) The pharmacy benefit manager shall accept an appeal submitted by a contracted pharmacy on or before sixty (60) days of the initial claim and the pharmacy benefit manager's appeal process shall include the following:[

~~(a) The pharmacy benefit manager shall accept an appeal by a contracted pharmacy on or before sixty (60) days of the initial claim~~];

(a)[~~(b)~~] Notification to the appealing party that the appeal has been received, and the names, addresses, email addresses, and telephone numbers of the pharmacy benefit manager's contact persons for questions regarding the maximum allowable cost appeal process; and

(b)[~~(c)~~] A provision allowing a contracted pharmacy, pharmacy service administration organization, or group purchasing organization, to initiate the appeal process, regardless if an appeal has previously been submitted by a pharmacy or the pharmacy's designee outside of Kentucky, by contacting the pharmacy benefit manager's designated contact person electronically, by mail, or telephone. If the appeal process is initiated by telephone, the appealing party shall follow up with a written request within three (3) days.

(3) The pharmacy benefit manager's maximum allowable cost pricing appeal process shall be readily accessible to contracted pharmacies electronically, through publication on the pharmacy benefit manager's website, and in either the contracted pharmacy's contract with the pharmacy benefit manager or through a pharmacy provider manual distributed to contracted pharmacies, pharmacy service administration organizations, and group purchasing organizations.

(4) For an appeal received from a pharmacy services administration organization or a group purchasing organization related to a dispute regarding maximum allowable cost pricing, a pharmacy benefit manager may request documentation that the pharmacy services administration organization or group purchasing organization is acting on behalf of a contracted pharmacy before responding to the appeal.

(5) The pharmacy benefit manager shall investigate, resolve, and respond to the appeal within ten (10) calendar days of receipt of the appeal. Upon resolution, the pharmacy benefit manager shall issue a written response to the appealing party that shall include the following:

(a) The date of the decision;

(b) The name, phone number, mailing address, email address, and title of the person making the decision; and

(c) A statement setting forth the specific reason for the decision, including:

1. If the appeal is granted:

a. The amount of the adjustment to be paid retroactive to the initial date of service to the appealing pharmacy;

b. The drug name, national drug code, and prescription number of the appealed drug; and

c. The appeal number assigned by the pharmacy benefit manager, if applicable; or

2. If the appeal is denied:

a. The national drug code of the appealed drug, or the national drug code of a therapeutically equivalent drug as referenced [~~defined~~] in KRS 304.17A-162(9), of the same dosage, dosage form, and strength of the appealed drug; and

b. The Kentucky licensed wholesaler offering the drug at or below maximum allowable cost on the date of fill.

(6) When a pharmacy benefit manager grants an appeal for which a price update is warranted in accordance with KRS 304.17A-162(2), the pharmacy benefit manager shall individually notify contracted pharmacies of the date of the granted appeal, the appealed drug, initial date of service, national drug code, generic code number, applicable information to identify the health benefit plan, and retroactive price update by the time of release of the next scheduled maximum allowable cost update following the appeal decision by:

(a) Mail Courier;

(b) Electronic mail;

(c) Facsimile; or

(d) Web portal posting for sixty (60) days and corresponding electronic communication to a contracted pharmacy with hyperlink to the portal for the granted appeal. A pharmacy benefit manager shall include in the beginning and upon renewal of the contract with a pharmacy or the pharmacy's representative, notice[~~,~~] and instructions for how to access and use the web portal.

(7) All contracted pharmacies permitted to reverse and resubmit claims following a granted appeal pursuant to KRS 304.17A-162(2) shall submit claims to the pharmacy benefit manager within sixty (60) days of notification that the appeal was granted.

(8) A pharmacy benefit manager shall submit the maximum allowable cost pricing appeal process and a template response satisfying the requirements of subsection (5) of this section to the department for review and approval.

Section 3. Department Review of Maximum Allowable Cost Pricing Appeal. (1) A contracted pharmacy or the pharmacy's designee may file a complaint with the department following a final decision of the pharmacy benefit manager, [~~to the department~~] in accordance with KRS 304.2-160 and 304.2-165.

(2) A complaint shall be submitted to the department no later than thirty (30) calendar days from the date of the pharmacy benefit manager's final decision.

(3) The department shall be entitled to request additional information necessary to resolve a complaint from any party in accordance with KRS 304.2-165 and 304.17A-162(5).

Section 4. Maximum allowable cost list availability and format. (1) The pharmacy benefit manager shall make available to the contracted pharmacy a comprehensive list of drugs subject to maximum allowable cost pricing.

(2) The comprehensive maximum allowable cost pricing list shall:

(a) Be a complete listing by drug in an electronically accessible format [~~, unless, upon a pharmacy's written request the list be provided in a paper or other agreed format within two (2) business days upon receiving the necessary information required for each list requested;~~]

(b) Identify the applicable health plan for which the pricing is applicable;

(c) [~~Be electronically searchable and sortable~~] Contain the ability to search and sort drugs electronically by individual drug name, national drug code, and generic code number;

(d) Contain data elements including the drug name, national drug code, per unit price, and strength of drug;

(e) List a specific maximum allowable cost for each drug that will be reimbursed by the pharmacy benefit manager;

(f) Provide the effective date for that maximum allowable cost price; and

(g) Provide the date the maximum allowable cost list was updated.

(3) The pharmacy benefit manager shall retain, in accordance with subsection (2)(a) of this section, historical pricing data for a minimum of 120 days.

Section 5. Weekly Updates to Maximum Allowable Cost Price List.

(1) Pharmacy benefit managers shall send to all contracted pharmacies one (1) weekly update to the maximum allowable cost price list.

(2) The weekly update shall include the information below for all drugs added, removed, or changed in price since the last weekly update:

(a) Be in an electronically accessible format on the pharmacy benefit manager's Web site[~~, unless, upon written request by the pharmacy the update be provided in paper or other agreed format within two (2) business days of receipt of the request from the contracted pharmacy~~];

(b) Identify the basis for each drug's inclusion on the update;

(c) If a drug is added to the maximum allowable cost list, the maximum allowable cost price shall be indicated;

(d) Identify all drugs removed from the maximum allowable cost list;

(e) If a change in the maximum allowable cost price is made, include the old price, and new price;

(f) Identify the drug name, national drug code, generic code number, and the applicable health benefit plan information; and

(g) Identify the effective date of the change.

Section 6. Data Source Availability. Each pharmacy benefit manager shall identify electronically or within contracts to all contracted pharmacies the national drug pricing compendia, or sources used to obtain drug price data for those drugs, subject to maximum allowable cost provisions. If any changes are made to the data sources following the execution of a contract, the pharmacy benefit manager shall individually notify the contracted pharmacies of the changes [~~either~~] through correspondence submitted electronically, by facsimile, or by mail courier.

Section 7. Annual report. All pharmacy benefit managers licensed to do business in Kentucky shall transmit [~~at least annually by March 31 to the department~~] a Pharmacy Benefit Manager Annual Report to the department at least annually, by March 31 of each year.

Section 8. Incorporation by Reference. (1) "Pharmacy Benefit Manager Annual Report," 06, 2017 [~~June 2017~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, The Mayo-Underwood Building, 500 Mero Street [~~215 West Main Street~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner
RAY A. PERRY, Secretary

APPROVED BY AGENCY: November 5, 2021

FILED WITH LRC: November 12, 2021 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on January 21, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 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 below.

CONTACT PERSON: Abigail Gall, Regulations Coordinator, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation expounds upon the Department of Insurance's oversight of the relationship between a pharmacy and pharmacy benefit manager as directed by KRS 304.17A-162. This administrative regulation provides further detail on the required internal and external complaint processes for pharmacy benefit managers. These appeals are available to pharmacists contesting the amount of a pharmacy benefit manager's maximum allowable cost payments received for prescriptions. The regulation sufficiently narrows the scope of the Department's review in the appeal process to ensure the pharmacy benefit manager has applied the appropriate standards required pursuant to KRS 304.17A-162. This administrative regulation requires a pharmacy benefit manager to provide the Department

annual reports to allow for the identification of any issues in this specific process and determine any necessary Department action.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to implement KRS 304.17A-162.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.17A-162 requires the Department to promulgate administrative regulations concerning specific aspects of the relationship between a pharmacy and a pharmacy benefit manager.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation clarifies the scope of the Department's review of maximum allowable cost prescription appeals. It also provides a reporting obligation on behalf of pharmacy benefit managers to allow the Department to efficiently oversee pharmacy benefit managers and identify any areas of concern.

(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 address drafting requirement, as well as require all information be available electronically.

(b) The necessity of the amendment to this administrative regulation: In reviewing applications for Pharmacy Benefit Managers, the Department has addressed common questions, particularity related to the electronic format of the maximum allowable cost list and tis searchability, so the amendments address the concerns raised.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.17A-162 requires the Department to promulgate administrative regulations concerning specific aspects of the relationship between a pharmacy and a pharmacy benefit manager. The amendments to this regulation clarify the beforementioned relationship, and the processes affiliated with them.

(d) How the amendment will assist in the effective administration of the statutes: Thee amendments clarify the regulation's intent, and require information to be available electronically which addresses many concerns that have been brough to the Department's attention.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Pharmacies, pharmacy benefit managers, and insurers operating within the Commonwealth of Kentucky will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The requirements imposed upon each of the entities are similar to existing requirements already found in other states. To comply with these Kentucky specific provisions, the pharmacy benefit managers will need to configure their operating systems in such a manner to allow pharmacies sufficient access to their maximum allowable cost price lists and weekly updates with the required information electronically. Pharmacy benefit managers will be required to maintain appeal data used in generating the annual reports.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The requirements established in this regulation are very similar to requirements already established in other states. The cost of compliance is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The parties will benefit from greater transparency in the prescription pricing process and the adoption of an official appeal process, with Department oversight, that will prevent parties from taking advantage of each other's position.

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

(a) Initially: This should not cost the Department as this is a current process included in the current budget.

(b) On a continuing basis: The Consumer Protection Division will continue to handle complaints submitted, and should have no increase of cost on the Department.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current operational budget of the Department.

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

(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.

(9) TIERING: Is tiering applied? Tiering is not used as the regulation applies to all entities operating as pharmacy benefit managers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Insurance.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.17A-162.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department does not anticipate any additional cost.

(d) How much will it cost to administer this program for subsequent years? The Department anticipates the current personnel in the Department of Insurance will continue to investigate complaints.

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

Revenues (+/-): .

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(Amendment)

806 KAR 18:030. Group health insurance coordination of benefits.

RELATES TO: KRS 304.17-042, 304.17A-250(9), 304.18-032, 304.18-085, 304.32-145, 304.38-185, 42 U.S.C. 1395

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.18-085, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner of the Department of Insurance to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.32-250 authorizes the commissioner to promulgate reasonable administrative regulations necessary for the proper administration

of KRS 304.32. KRS 304.38-150 authorizes the commissioner to promulgate reasonable administrative regulations necessary for the proper administration of KRS 304.38. This administrative regulation establishes guidelines for coordination of benefits by group health insurance contracts.

Section 1. Definitions. (1) "Allowable expense" means a health care service or expense, including deductibles, coinsurance, and copayments, that is covered in full or in part by any of the plans covering the person.

(2) "Claim" means a request that benefits of a plan be provided or paid, and the benefits claimed are in the form of:

(a) Services, including supplies;

(b) Payment for all or a portion of the expenses incurred;

(c) A combination of paragraphs (a) and (b) of this subsection; or

(d) An indemnification.

(3) "Complying plan" means a plan with benefit determination requirements that comply with the requirements of this administrative regulation.

(4) "Coordination of benefits" means a provision establishing an order in which plans pay their claims[~~,~~] and permitting secondary plans to reduce their benefits so that the combined benefits of all plans do not exceed total allowable expenses.

(5) "Custodial parent" means the parent awarded custody of a child by a court decree or with whom the child resides more than one-half (1/2) of the calendar year.

(6) "Insurer" is defined by KRS 304.17A-005(29)[~~(27)~~].

(7) "Noncomplying plan" means a plan without benefit determination requirements or whose benefit determination requirements do not comply with the requirements of this administrative regulation.

(8) "Plan":

(a) Means:

1. A form of coverage with which coordination of benefits is allowed and "health benefit plans" as defined by KRS 304.17A-005(22); and

2. Sometimes includes Medicare benefits pursuant to 42 U.S.C. 1395, or other governmental benefits; and

(b) Does not mean:

1. The medical benefits coverage in a group, group-type, and individual motor vehicle "no-fault" or [~~and~~] traditional automobile "fault" type contract [~~contracts~~]; or

2. School accident-type coverages that cover elementary, high school, or college students for accidents only, including athletic injuries, either on a twenty-four (24) hour basis or on a "to-and-from school" basis.

(9) "Primary plan" means a plan whose benefits for a person's health care coverage are determined without taking the existence of any other plan into consideration if:

(a) The plan either has no order of benefit determination requirements, or its requirements differ from those permitted by this administrative regulation; or

(b) All plans that cover the person use the order of benefit determination requirements required by this administrative regulation, and under those requirements the plan determines its benefits first.

(10) "Secondary plan" means a plan that is not a primary plan.

Section 2. Requirements for Coordination of Benefits. (1) If a person is covered by two (2) or more plans, the requirements for determining the order of benefit payments shall be as established in paragraphs (a) through (c) of this subsection.

(a) The primary plan shall pay or provide its benefits as if the secondary plan or plans did not exist.

(b) A plan that does not contain a coordination of benefits provision consistent with this administrative regulation shall [~~be~~] always be primary, except that coverage obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may state the supplementary coverage shall be secondary to the basic package of benefits provided by the contract holder.

(c) A plan may take the benefits of another plan into account only if it is secondary to that other plan.

(2) Order of Benefit Determination. The following requirements shall be applied in the following priority, alphabetically to determine the order of plan payment:

(a) Nondependent or dependent.

1. The plan that covers a person other than as a dependent shall be primary.

2. The plan that covers a person as a dependent shall be secondary, unless the person is a Medicare beneficiary, in which case the order of benefits is determined in accordance with 42 U.S.C. 1395.

(b) Dependent child covered under more than one (1) plan. Unless a court decree determines otherwise, or a parent has made an election within the first thirty-one (31) days of birth to add a newborn as a dependent to one parent's plan, plans covering a dependent child, including a newborn subject to KRS 304.17-042 and 304.18-032, shall determine the order of benefits as established in subparagraphs 1. through 4. of this paragraph.

1. The primary plan shall be the plan of the parent whose birthday is earlier in the year if:

a. The parents are married;

b. The parents are not separated, whether or not they have ever been married [~~(whether or not they ever have been married)~~]; or

c. A court decree awards joint custody without establishing that one (1) parent has the responsibility to provide health care coverage.

2. If both parents have the same birthday, the plan that has covered either of the parents longer shall be primary.

3. If a court decree states that one (1) parent is responsible for the child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan shall be primary. If the parent with responsibility has no coverage for the child's health care services or expenses, but the responsible parent's spouse does, the spouse's plan shall be primary.

4. If the parents are divorced, separated, or not married, and there is no court decree allocating responsibility for the child's health care services or expenses, the order of benefit determination among the plans of the parents and the parents' spouses (if any) shall be the plan of the:

a. Custodial parent;

b. Spouse of the custodial parent;

c. Noncustodial parent; and

d. Spouse of the noncustodial parent.

(c) Active or inactive employee. The plan that covers a person as an active employee, neither laid off nor retired, or as an active employee's dependent, shall be primary. The plan covering the same person as a retired or laid-off employee, or as a dependent of a retired or laid-off employee, shall be the secondary plan.

(d) Continuation coverage. If a person has coverage provided pursuant to a right of continuation pursuant to federal or state law and is also covered under another plan, the continuation coverage shall be secondary.

(e) Longer or shorter length of coverage. If the preceding requirements established in paragraphs (a) through (d) of this subsection, respectively, do not determine the order of benefits, the plan that covered the person for the longer period of time shall be primary:

1. To determine the length of time a person has been covered under a plan, two (2) plans shall be treated as one (1) if the covered person was eligible under the second within twenty-four (24) hours after the first ended;

2. Changes during a coverage period that do not constitute the start of a new plan include:

a. A change in scope of a plan's benefits;

b. A change in the entity that pays, provides, or administers the plan's benefits; or

c. A change from one (1) type of plan to another; and

3. The person's length of time covered under a plan shall be measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group shall be used as the

date from which to determine the length of time the person's coverage under the present plan has been in force.

(f) If none of the preceding requirements established in paragraphs (a) through (e) of this subsection, respectively, determines the primary plan, the allowable expenses shall be shared equally between the plans.

Section 3. Procedure to be followed by Secondary Plan to Calculate Benefits and Pay Claim.

(1) A secondary plan shall reduce its benefits so that the total benefits paid or provided by all plans shall not be more than 100 percent of total allowable expenses.

(2) If a person is covered by more than one (1) secondary plan, the order of benefit determination requirements of this administrative regulation shall decide the order in which secondary plans benefits shall be determined in relation to each other.

(3) The secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

Section 4. Notice to Covered Persons. A plan shall, in its explanation of benefits provided to covered persons, include the following language: "If you are covered by more than one (1) health benefit plan, you should file all your claims with each plan."

Section 5. Miscellaneous Provisions. (1) Provision of Services. A secondary plan that provides benefits in the form of services shall only recover the reasonable cash value of the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan.

(2) Non-Complying Plan Coordination.

(a) A plan with order of benefit determination requirements that comply with this administrative regulation may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefit determination requirements that do not comply with those contained in this administrative regulation if the:

1. Complying plan is the primary plan, it shall pay or provide its benefits first;

2. Complying plan is the secondary plan, it shall pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the complying plan were the secondary plan. In that situation, the payment shall be the limit of the complying plan's liability; and

3. Noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own[,] and shall pay its benefits accordingly. If, within two (2) years of payment, the complying plan receives information as to the actual benefits of the noncomplying plan, it shall adjust payments accordingly.

(b) If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than he or she would have received had the complying plan paid or provided its benefits as the secondary plan, and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation as established in paragraph (3)1. through 4. of this subsection, then the complying plan shall advance to or on behalf of the covered person an amount equal to the difference.

(c) The complying plan shall not advance more than the complying plan would have paid had it been the primary plan, less any amount it previously paid for the same expense or service, and:

1. In consideration of the advance, the complying plan shall be subrogated to all rights of the covered person against the noncomplying plan; and

2. The advance by the complying plan shall also be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation.

(3) Coordination of benefits differs from subrogation. Provisions for one (1) may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

(4) If the plans cannot agree on the order of benefits within thirty (30) calendar days after the plans have received all of the information needed to pay the claim, the plans shall immediately pay the claim in equal shares and determine their relative liabilities following payment, except that a plan shall not be required to pay more than it would have paid had it been the primary plan.

SHARON P. CLARK, Commissioner
RAY A. PERRY, Secretary

APPROVED BY AGENCY: November 12, 2021

FILED WITH LRC: November 12, 2021 at 9:58 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on January 21, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 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 below.

CONTACT PERSON: Abigail Gall, Regulations Coordinator, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for coordination of benefits by group health insurance contracts.

(b) The necessity of this administrative regulation: The regulation is necessary to clarify the coordination of benefit requirements and order of payment provisions for individual policyholders, to conform to statutory requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation satisfies the statutory mandate of KRS 304.18-085 to prescribe clear guidelines regarding the coordination of benefits between multiple, applicable group health insurance policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting forth the determination of benefits, this administrative regulation satisfies the requirements of KRS 304.18-085.

(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 clarify that if a parent has elected a newborn dependent to be covered under one parent's plan within the newborn's first 31 days of birth, the determination of benefits shall not be triggered, as the plan benefits of the selected parent would be primary.

(b) The necessity of the amendment to this administrative regulation: These amendments are to clarify language regarding newborn coverage benefit determinations. The Department issued Advisory Opinion 2020-005 in 2020 to address this concern, and it is now amending the regulation to formally address those concerns.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.18-085 requires the Commissioner to prescribe guidelines regarding the coordination of benefits by group health insurance policies.

(d) How the amendment will assist in the effective administration of the statutes: KRS 304.18-085 requires the Commissioner to prescribe guidelines regarding the coordination of benefits by group health insurance policies, and these amendments ensure that statutory requirement is effectively satisfied.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The exact type and number are unknown.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Parents of newborns will have to elect coverage under one parent's plan within the first 31 days of a newborn's life, or the benefit determination in Section 2(2)b will be applicable. This amendment should have no impact on the health insurer (regulated entity).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The process set forth in this administrative regulation clarifies a long-standing practice and should impose no cost to the regulated entity, nor the policy holder/dependent.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance with this proposed regulatory amendment, regulated entities will ensure compliance with KRS 304.18-085.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an ongoing cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase of fees will not be necessary because additional personnel is likely unnecessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all health insurers offering group policies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance will be impacted as the agency implementing of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), KRS 304.18-085, KRS 304.32-250, and KRS 304.38-150

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have a cost to implement in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have a cost to administer subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: As the amendments to this administrative regulation simply clarify an existing process, this administrative regulation will not have a fiscal impact on the Department of Insurance.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 6:001. Definitions for 810 KAR Chapter 6.

RELATES TO: KRS Chapter 23013

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.361(1), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to regulate conditions under which horse racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation defines the terms used in 810 KAR Chapter 6.

Section 1. Definitions.

(1) "Added money" means:

(a) Cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race; or

(b) In the context of pari-mutuel wagering, any amounts provided by an association in addition to the amounts wagered by patrons and any carryover amounts.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Appaloosa horse" means a horse duly registered with the Appaloosa Horse Club, Inc., Moscow, Idaho.

(4) "Appaloosa racing" is defined by KRS 230.210(3).

(5) "Arabian horse" means "arabian" as defined by KRS 230.210.

(6) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to 810 KAR Chapter 6.

(7) "Association" is defined by KRS 230.210(5).

(8) "Authorized agent" means any person currently licensed as an agent for a licensed owner or jockey by virtue of notarized appointment of agency filed with the commission.

(9) "Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in a mutuel field, on which a single pari-mutuel wager can be placed.

(10) "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(11) "Breakage" means the net pool minus payout.

(12) "Breeder" means the owner of the dam of a horse when the horse was foaled. A horse is "bred" at the place of its foaling.

(13) "Calendar days" means consecutive days counted irrespective of number of racing days.

(14) "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 810 KAR 6:020.

(15) "Claiming race" means any race in which every horse running in the race can be transferred in conformity with 810 KAR 4:050.

(16) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(17) "Commission" means:

(a) The Kentucky Horse Racing Commission if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or

(b) If used in the context of pari-mutuel wagering, the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, KRS 230.750, and KAR Title 810. This meaning can also refer to "takeout" as defined by subsection (83) of this section.

(18) "Communications Technology" means the methods used and the components employed to facilitate the transmission of information, such as electronic communications, and transmission and reception systems based on wire, cable, radio, microwave, light, optics, or computer data networks or any similar electronic agent.

(19) "Control Program" means any software, source language, or executable code that controls the entertaining award display, such as software, source language, or executable code associated with:

(a) Race selection or related events;

(b) Accounting and reporting meter and log information;

(c) Operation of totalizators; and

(d) Any other processes outlined in the internal controls or as approved by the commission.

(20)[~~(18)~~] "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(21)[~~(19)~~] "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(22)[~~(20)~~] "Declaration" means the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR Chapter 6.

(23)[~~(21)~~] "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on historical horse races.

(24)[~~(22)~~] "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

(a) Refusal to issue or renew a license;

(b) Revocation or suspension of a license;

(c) Imposition of probationary conditions on a license;

(d) Issuance of a written reprimand or admonishment;

(e) Imposition of fines or penalties;

(f) Denial of purse money;

(g) Forfeiture of purse money; or

(h) Any combination of paragraphs (a) through (g) of this subsection.

(25)[~~(23)~~] "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.

(26)[~~(24)~~] "Driver" means a person who is licensed to drive a horse in a harness race.

(27) "Entertaining Award Display" or "Interactive Award Display" means an entertaining system utilizing mechanical or digital components to display the outcome of a pari-mutuel wager through the use of spinning reels, wheels, games, or other types of interactive components that are represented by animations or audio cues. An Entertaining or Interactive Award Display must be connected to a totalizator approved by the commission. Entertaining or interactive displays shall only be used in conjunction with pari-mutuel wagering on a historical horse race or races.

(28)[~~(25)~~] "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(29)[~~(26)~~] "Equipment" means:

(a) accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes; or[~~.~~]

(b) racing, system components or other equipment found suitable by the commission or its designee that is required to operate entertaining or interactive award displays and interactive terminals.

(30)[~~(27)~~] "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which pari-mutuel wagering is not permitted.

(31)[~~(28)~~] "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race or races other than a win, place, or show wager placed on a live horse race.

(32)[~~(29)~~] "Field" or "mutuel field" means a single betting interest involving more than one (1) horse that is not a mutuel entry.

(33)[~~(30)~~] "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards or the commission.

(34)[~~(31)~~] "Free handicap" means a handicap for which a nominating fee is not required to be weighted, but an entrance or starting fee can be required for starting in the race.

(35)[~~(32)~~] "Handicap race" means a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(36)[~~(33)~~] "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(37)[~~(34)~~] "Historical horse race" means any horse race that:

(a) Was previously run at a licensed pari-mutuel facility located in the United States;

(b) Concluded with official results; and

(c) Concluded without scratches, disqualifications, or dead-heat finishes.

(38)[~~(35)~~] "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding).

(39)[~~(36)~~] "Ineligible" means a horse or person not qualified under 810 KAR Chapter 6 or conditions of a race to participate in a specified racing activity.

(40)[~~(37)~~] "Initial seed pool" means a nonrefundable pool of money that can be funded by an association in order to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race in the event of a minus pool.

(41) "Interactive Terminal" or "HHR Terminal" means "Terminal" as defined by subsection (89)(b) of this section.

(42) "Internal Controls," "Minimum Internal Control Standards," or "Control Standards" refers to the system of internal procedures, as well as administrative and accounting controls related to the integrity of pari-mutuel wagering. Any such system may be required by the commission as a condition to conduct live horse racing, simulcasting, and pari-mutuel wagering.

(43)[~~(38)~~] "Jockey" means a rider currently licensed to ride in races other than harness races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(44)[~~(39)~~] "Judge" means a duly appointed racing official with powers and duties established in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(45)[~~(40)~~] "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(46)[~~(41)~~] "Licensed premises" is defined by KRS 230.210.

(47)[~~(42)~~] "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in

the Commonwealth.

(48)[~~(43)~~] "Maiden" means a horse that has never won a race on the flat at a recognized meeting in any country. A maiden that was disqualified after finishing first remains a maiden. Race conditions referring to maidens shall be interpreted as meaning maidens at the time of starting.

(49)[~~(44)~~] "Match race" means a race that is between two (2) horses and for which other horses are not eligible.

(50)[~~(45)~~] "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

(a) Begins at 10 a.m. of the first racing day; and

(b) Extends through a period ending one (1) hour after the last scheduled race of the last day.

(51)[~~(46)~~] "Minus pool" means a pari-mutuel pool in which the amount of money to be distributed on winning wagers exceeds the amount of money contained in that pari-mutuel pool.

(52)[~~(47)~~] "Month" means calendar month.

(53)[~~(48)~~] "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(54)[~~(49)~~] "Net pool" means the total amount wagered less refundable wagers and takeout.

(55)[~~(50)~~] "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(56)[~~(51)~~] "Nominator" means the person in whose name a horse is entered for a race.

(57)[~~(52)~~] "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(58)[~~(53)~~] "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" is defined by KRS 230.210.

(59)[~~(54)~~] "Pari-mutuel pool" means any pool into which pari-mutuel wagers made by patrons are placed. For every wager placed into a pari-mutuel pool by a patron, that patron is eligible to receive at least a minimum payout on a winning wager.

(60)[~~(55)~~] "Patron" means an individual present at a track, licensed premises, or a simulcast facility who observes or wagers on live or historical horse races.

(61)[~~(56)~~] "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(62)[~~(57)~~] "Place," if used in the context of a single position in the order of finish in a race, means second; if used in the context of pari-mutuel wagering, a "place" wager means one involving a payoff on a betting interest that finished first or second in a race; or if used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first or second.

(63)[~~(58)~~] "Player-funded pool" means a pool of money funded by patrons wagering on a live or historical horse race or races that is only used to ensure that a patron will receive a payout on a winning wager in the event of a "minus pool" as defined in this administrative regulation.

(64)[~~(59)~~] "Post" means the starting point of a race.

(65)[~~(60)~~] "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(66)[~~(61)~~] "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(67)[~~(62)~~] "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(68)[~~(63)~~] "Purse" means the gross cash portion of the prize for which a race is run.

(69)[~~(64)~~] "Quarter horse" is defined by KRS 230.210.

(70)[~~(65)~~] "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(71)[~~(66)~~] "Race" means a running contest between horses, ridden by jockeys or driven by drivers, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(72)[~~(67)~~] "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(73)[~~(68)~~] "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(74)[~~(69)~~] "Recognized meeting" means any meeting with regularly scheduled live horse races for thoroughbreds on the flat, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries that are regulated by a racing authority that has reciprocal relations with The Jockey Club and whose race records can be provided to an association by The Jockey Club.

(75)[~~(70)~~] "Registration certificate" means, with respect to thoroughbreds:

(a) The document issued by The Jockey Club certifying the name, age, color, sex, pedigree, and breeder of a horse as registered by number with The Jockey Club; or

(b) The document known as a "racing permit" issued by The Jockey Club in lieu of a registration certificate if a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

(76)[~~(71)~~] "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pari-mutuel pools.

(77)[~~(72)~~] "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(78)[~~(73)~~] "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with KAR Title 810.

(79)[~~(74)~~] "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(80)[~~(75)~~] "Secretary" means the duly appointed and currently serving secretary of the commission.

(81)[~~(76)~~] "Simulcasting" is defined by KRS 230.210.

(82)[~~(77)~~] "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(83)[~~(78)~~] "Stakes" means all fees:

(a) Paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as required by the conditions of the race; and

(b) Included in the purse.

(84)[~~(79)~~] "Stakes race" means a race that closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of $50,000 or more without payment of stakes. With the exception of stakes races in North America, "stakes race" excludes races not listed by The Jockey Club Information System International Cataloguing Standards, Part One (1).

(85)[~~(80)~~] "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.

(86)[~~(81)~~] "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(87)[~~(82)~~] "Subscription" means nomination or entry of a horse in a stakes race.

(88)[~~(83)~~] "Takeout" means "commission" as defined by subsection (17)(b) of this section

(89)[~~(84)~~] "Terminal" means:

(a) any self-service device or other totalizator-based peripheral equipment [~~totalizator machine or other mechanical equipment~~] used by a patron to place a pari-mutuel wager on a live or historical horse race or races; or

(b) any mechanical, electrical, or other device, contrivance, or machine that, upon funding of any pari-mutuel wager on a

historical horse race or races, is capable of placing a pari-mutuel wager on that historical horse race or races. All such devices may provide handicapping methods approved by the commission, in addition to manual handicapping. In the event of a winning wager, a terminal displays and either delivers or entitles the patron to receive a payout pursuant to 810 KAR 6:030. Any such payouts may be issued by the terminal itself or by the licensed association approved to operate the interactive terminal and related pari-mutuel pool.

(c) The commission must approve any such terminal and the commission may revoke that approval at any time.

(90)[~~(85)~~] "Thoroughbred racing" is defined by KRS 230.210.

(91)[~~(86)~~] "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(92)[~~(87)~~] "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(93)[~~(88)~~] "Wagering pool" means "pari-mutuel pool" as defined by subsection (54) of this subsection.

(94)[~~(89)~~] "Walkover" means a race in which the only starter or all starters represent single ownership.

(95)[~~(90)~~] "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

(96)[~~(91)~~] "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

(97)[~~(92)~~] "Weight for age" means the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as established in 810 KAR 4:020.

(98)[~~(93)~~] "Workout" means the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(99)[~~(94)~~] "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. If any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

JONATHAN RABINOWITZ, Chair
RAY PERRY, Secretary

APPROVED BY AGENCY: November 12, 2021

FILED WITH LRC: November 5, 2021 at 2:26 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. EST on January 24, 2022 via video conference at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax+1 (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the regulatory definitions that apply to all pari-mutuel and exotic wagering on live and historical horse races in the Commonwealth.

(b) The necessity of this administrative regulation: The regulation is necessary to provide specific and updated definitions of the terms used in the commission's regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation provides specific and updated definitions for the terms used in the commission's administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: First, this amendment proposes updating the definitions of "added money," "equipment," and "terminal." Additionally, the following terms and benchmarks are defined to aid in developing conditions related to the integrity of pari-mutuel wagering and horse racing: "communications technology;" "control program;" "entertaining award display" or "interactive terminal display;" "interactive terminal" or "HHR terminal;" and "internal controls," "minimum internal standards," or "control standards."

(b) The necessity of the amendment to this administrative regulation: Due to the emergent and fluid nature of the technology utilized to offer pari-mutuel wagering, the commission regularly proposes amendments to relevant regulations to stay current with terms used throughout the industry. This proposed amendment updates the regulation to stay current with industry terminology and concepts.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to regulate the conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This regulation provides specific definitions of terms used in the commission's administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This proposed amendment provides definitions of terms used in the commission's administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the eight currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse racing in the Commonwealth, and the commission.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Racing associations offering HHR wagering must abide by the proposed definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity or increase compliance costs at all for the commission.

(c) As a result of compliance, what benefits will accrue to the

entities: The racing associations will have a defined process to follow if they plan to offer exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each racing association. The increased purses will help the racing associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to a racing association's facilities. The patrons will benefit from any improvements to a racing association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the racing associations for additional employee compensation and other expenses.

(b) On a continuing basis: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the racing associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs for the commission. Generally, the commission is reimbursed by the racing associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(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 proposed amendment is not anticipated to increase compliance costs significantly for any regulated entity and will not increase compliance costs at all for the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each racing association.

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 Horse Racing Commission and the 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 230.215, 230.260, 230.361, and 230.370.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this proposed amendment will preserve tax revenue by allowing associations to continue offering pari-mutuel wagering on historical horse racing, while still complying with recent Supreme Court case law. As it is under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Instead, this proposed amendment will preserve tax revenue by allowing associations to continue offering pari-mutuel wagering on historical horse racing, while still complying with recent Supreme Court case law. As it is under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This regulation will have no effect on the expenditures and revenues of any state or local government agency.

(d) How much will it cost to administer this program for subsequent years? There will be no administrative costs as a result of this regulation.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 8:025. Drug, medication, and substance withdrawal guidelines.

RELATES TO: KRS 230.215, 230.225, 230.240, 230.260, 230.265, 230.290, 230.320, 230.370

STATUTORY AUTHORITY: KRS 230.215(2), 230.225, 230.240(2), 230.260, 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the withdrawal guidelines for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

Section 1. The Kentucky Horse Racing Commission Withdrawal Guidelines Thoroughbred; Standardbred; Quarter Horse, Appaloosa, and Arabian.

(1) This administrative regulation shall provide certain mandatory treatment requirements, guidance, and advice on medication withdrawal intervals.

(2)[~~(a)~~] These withdrawal guidelines regarding furosemide shall not apply to two (2) year-old or stakes horses pursuant to 810 KAR 8:010 Section 6.

(3)(a)[~~(b)~~] Unless otherwise specified in these withdrawal guidelines, KAR Title 810, or KRS Chapter 230, the following withdrawal guidelines in this section are voluntary and advisory. The guidelines are recommendations based on current scientific

knowledge that may change over time.

(b)[~~(c)~~] A licensee may present evidence of full compliance with these guidelines to the commission and the stewards as a mitigating factor to be used in determining violations and penalties.

(c)[~~(d)~~] These withdrawal interval guidelines assume that administration of medications will be performed at doses that are not greater than the manufacturer's maximum recommended dosage, or the dosage recommended in this document. Medications administered at dosages above manufacturer's recommendations, in compounded formulations, or in combination with other medications or administration inside the withdrawal interval may result in test sample concentrations above threshold concentrations that could lead to positive test results and the imposition of penalties.

(d)[~~(e)~~] The time of administration of an orally administered substance, for the purposes of withdrawal interval, shall be considered to be the time of complete ingestion of the medication by the horse via eating or drinking.

(e)[~~(f)~~] For products containing multiple medications, the withdrawal time to be used should be no less than the longest identified for any of the individual constituent substances--even if that substance is not present in the highest concentration in the product.

(f)[~~(g)~~] Brand names of medications, where applicable, are listed in parentheses following the generic name of a drug.

(4)[~~(3)~~](a) Withdrawal Guidelines. Furosemide shall be administered pursuant to 810 KAR 8:010.

(b) The following substances may be administered or applied up to the scheduled paddock time of the race in which the horse is to compete:

1. Topical applications, such as liniments, leg paints, salves, and ointments, which may contain antibiotics or DMSO, but do not contain steroids, anesthetics, or any other prohibited substances.

2. The following substances may be administered up to twenty-four (24) hours prior to the scheduled post time of the race in which the horse is to compete as long as their use follows subsection (3)[~~(2)~~] of this section:

a. Antibiotics, except those containing prohibited drugs, such as Procaine;

b. Antiprotozoals, such as ponazuril (Marquis), toltrazuril (Baycox), sulfamethoxazole/pyrimethamine (Daraprim);

c. Antifungal agents, such as Griseofulvin and Ketoconazole;

d. Certain inhalation agents that do not exhibit bronchodilator properties, such as cromolyn sodium (Intal), and acetylcysteine (Mucomyst);

e. Cimetadine (Tagamet), orally at 20 mg/kg twice daily for 7 doses;

f. Electrolytes, Vitamins, and Minerals, via IV, IM or oral administration;

g. Any oral supplements or nutrients not containing drugs;

h. Hyaluronic Acid (Legend), via IV administration;

i. Misoprostol;

j. Non-Androgenic Reproductive Hormones, such as HCG, Regumate and GnRH, in fillies and mares only;

k. Omeprazole (Gastrogard), orally at 2.2 g once daily for 4 days;

l. Polysulfated glycosaminoglycan (Adequan), via IM administration;

m. Proprionibacterium acnes suspension (Eqstim), or comparable immunostimulants, excluding levamisole;

n. Ranitidine (Zantac), orally at 8 mg/kg twice daily for 7 doses; and

o. Sucralfate.

3. Non-steroidal anti-inflammatory drugs (NSAIDS):

a. Elected NSAID: Only one of the following three NSAIDS may be administered up to the manufacturer's maximum labeled dosage until forty-eight (48) hours prior to the scheduled post time of the race in which the horse is to compete, as long as their use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation and the requirements of 810 KAR 8:010.

(i) Phenylbutazone (Butazolidin) 4.4 mg/kg, via IV administration only;

(ii) Flunixin Meglumine (Banamine) 1.1 mg/kg, via IV administration only; and

(iii) Ketoprofen (Ketofen) 2.2 mg/kg, via IV administration only.

b. In accordance with the European Horserace Scientific Liaison Committee, the following withdrawal intervals shall be observed for all NSAIDS, except for those established in subparagraph 3.a. of this paragraph, for administration prior to the scheduled post time of the race in which the horse is to compete, as long as their use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation:

(i) Flunixin Meglumine (Banamine) 1.1 mg/kg, via IV administration: 6-day withdrawal interval;

(ii) Phenylbutazone (Butazolidin) 4.4 mg/kg, via IV administration: 7-day withdrawal interval;

(iii) Ketoprofen (Ketofen) 2.2 mg/kg, via IV administration: 4-day withdrawal interval;

(iv) Diclofenac Sodium Topical (Surpass Cream), via a single, 5-inch application: 7- day withdrawal interval; and

(v) Firocoxib (Equioxx) 0.1 mg/kg, via a single oral or IV dose, repeated daily administration: 15-day withdrawal interval from date of last administration.

(5)[~~c.~~] The following substances have a forty-eight (48) hour withdrawal guidance prior to the scheduled post time of the race in which the horse is to compete as long as their use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation:

(a)[~~(i)~~] Acepromazine (Promace), via IV administration at 0.05 mg/kg;

(b)[~~(ii)~~] Butorphanol (Torbugesic), via IV administration at 0.1 mg/kg;

(c)[~~(iii)~~] Cetirizine (Zyrtec), orally at 0.4 mg/kg twice daily for 5 doses; although it is recommended that ivermectin should not be administered within forty-eight (48) hours of a race if horse has been administered cetirizine;

(d)[~~(iv)~~] Dantrolene (Dantrium), via oral administration at 500 mg total dose;

(e)[~~(v)~~] Detomidine (Dormosedan), via IV administration at 5 mg single dose;

(f)[~~(vi)~~] DMSO via IV, oral, or topical administration up to 60 ml

(g)[~~(vii)~~] Glycopyrrolate (Robinol), via IV administration at 1 mg total dose;

(h)[~~(viii)~~] Guaifenesin, orally at 2 g twice daily for 5 doses;

(i)[~~(ix)~~] Methocarbamol (Robaxin-V), via single IV at 15 mg/kg;

(j)[~~(x)~~] Procaine penicillin, via IM administration at 17 mg/kg; and

(k)[~~(xi)~~] Xylazine (Rompun), via IV administration at 200 mg single dose.

(6)[~~d.~~] The following substances shall not be administered within forty-eight (48) hours of a race:

(a)[~~(i)~~] Beta-2 agonists by inhalation, such as terbutaline, salmeterol, and fenoterol;

(b)[~~(ii)~~] Ergot alkaloids, such as Ergonovine and Methergine;

(c)[~~(iii)~~] Ipratopium;

(d)[~~(iv)~~] Isoxsuprine; and

(e)[~~(v)~~] Pentoxyphylline (Trental).

(7)[~~e.~~] The following substances may be administered up to seventy-two (72) hours prior to the scheduled post time of the race in which the horse is to compete as long as their use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation:

(a)[~~(i)~~] Albuterol (Proventil) via inhalation at 720 mcg;

(b)[~~(ii)~~] Dexamethasone (Azium), via oral, IV, IM administration at 0.05 mg/kg. However, if another corticosteroid was administered systemically or intra-articularly, this withdrawal guidance shall not apply and a minimum five (5) day withdrawal is recommended;

(c)[~~(iii)~~] Lidocaine, via subcutaneous administration at 200 mg total dose;

(d)[~~(iv)~~] Mepivacaine (Carbocaine), via subcutaneous administration at 0.07 mg/kg; and

(e)[~~(v)~~] Romifidine (Sedivet), via IV administration at 50 mg.

(8)[~~f.~~] The following substances may be administered up to ninety-six (96) hours prior to the scheduled post time of the race in which the horse is to compete as long as their use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation:

(a) [~~(i)~~] Hydroxyzine (Atarax); and

(b) [~~(ii)~~] Phenytoin (Dilantin).

(9)[~~g.~~] Reserpine (Serpasil) may be administered up to seven (7) days prior to the scheduled post time of the race in which the horse is to compete as long as its use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation.

(10)[~~h.~~] The use of an extra-corporeal shock wave therapy or radial pulse wave therapy machine may be performed until ten (10) days prior to the scheduled post time of the race in which the horse is to compete, as long as its use complies with 810 KAR 8:010.

(11)[~~i.~~] The following substance may be administered up to twenty-one (21) days prior to the scheduled post time of the race in which the horse is to compete, as long as its use follows Section 1(3) [~~Section 1(2)~~] of this administrative regulation, and its use complies with 810 KAR 8:010 Section 10: Clenbuterol (Ventipulmin), orally up to 0.8 mcg/kg twice daily

(12)[~~j.~~] Any horse that has been treated with therapeutic medications found in Section 1 of this administrative regulation may, at the trainer's request and expense, and on permission of a commission veterinarian, have samples of blood or urine collected by the commission veterinarian for analysis by the commission laboratory prior to entry to race in the state of Kentucky.

(a)[~~(i)~~] As a condition of this elective testing, the trainer shall be required to disclose the date and time, dose, and route of administration of the substance for which clearance testing is requested.

(b)[~~(ii)~~] A report from the commission laboratory of a negative finding in this pre-race, elective testing shall not provide a safe harbor for the owner, trainer, veterinarian, or horse. A report from the commission laboratory of a positive finding in a post-race sample shall be treated as a violation of KAR Title 810, even if there was a negative finding by the commission laboratory in the clearance testing sample.

(13)[~~k.~~] The following shall have a fourteen (14) day stand down period for intra-articular injection. Any IA corticosteroid injection within fourteen (14) days shall be a violation:

(a)[~~(i)~~] Betamethasone, via IA administration at 9 mg total dose in a single articular space**.** Withdrawal time should be increased for use of betamethasone products with a ratio of greater than 1:1 betamethasone acetate to betamethasone sodium phosphate. Intramuscular administration is associated with substantially longer withdrawal times.

(b)[~~(ii)~~] Isoflupredone (Predef 2x), via IA administration at 20 mg in a single joint space or 10 mg subcutaneous.

(c)[~~(iii)~~] Methyprednisolone (Depo-Medrol), via IA administration at a total dose of less than 100 mg in a single articular space**.** Intramuscular administration is associated with substantially longer withdrawal times and is not recommended, in accordance with the Racing Medication and Testing Consortium. Clearance testing is recommended in blood and urine prior to entry.

(d)[~~(iv)~~] Triamcinolone acetonide (Vetalog), via IA administration at 9 mg total dose in a single articular space. Intramuscular administration is associated with substantially longer withdrawal times.

(14)[~~l.~~] It is recommended that any horses receiving Fluphenazine (Prolixin) receive pre-race clearance testing.

(15)[~~(4)~~] Withdrawal Guidelines Chart:

Substance	Brand Name	Recommended Minimum Withdrawal	Administration Specifications
Acepromazine	PromAce	48 hours	0.05 mg/kg via IV administration
Acetylcysteine	Mucomyst	24 hours	Inhalation
Albuterol	Proventil	72 hours	720 mcg via inhalation
Beclomethasone	Beclovent	24 hours	Inhalation only
Butorphanol	Torbugesic	48 hours	0.1 mg/kg via IV administration
Cetirizine	Zyrtec	48 hours	0.4 mg/ml orally twice daily for 5 doses
Cimetadine	Tagamet	24 hours	20 mg/kg orally twice daily for 7 doses
Clenbuterol	Ventipulmin	21 days	0.8 mcg/kg orally Pursuant to 810 KAR 8:010 Section 10, clenbuterol shall be prohibited unless the prescription is made for a specific horse based on a specific diagnosis. The veterinarian shall provide a copy of the treatment sheet to the Equine Medical Director or designee for review within twenty-four (24) hours of administration. A horse administered clenbuterol shall be placed on the veterinarian's list for at least twenty-one (21) days after the last administration. The horse shall meet all conditions for removal from the list, including negative blood and urine sampling.
Cromolyn sodium	Intal	24 hours	Inhalation
Dantrolene	Dantrium	48 hours	500 mg orally
Detomidine	Dormosedan	48 hours	5 mg via IV administration
Dexamethasone	Azium	72 hours IV PO, with no other corticosteroids administered. 5 days if other corticosteroids have been administered.	IV, PO, IM, pursuant to the European Horserace Scientific Liaison Committee.
DMSO		48 hours	Topical, IV, or oral administration up to 60 ml
Ergonovine		48 hours	No dose specified
Fenoterol		48 hours	Via inhalation, no dose specified
Furosemide 2-year-olds beginning in 2020 Stakes horses beginning in 2021	Salix	24 hours	Administration shall be prohibited at less than 24 hours, and limited to a maximum 500 mg single dose via IV administration
Furosemide	Salix	4 hours	150-500 mg single IV dose administered by KHRC veterinarian. See 810 KAR 8:010 Section 6.
Guaifenesin		48 hours	2 g orally twice daily for 5 doses
Glycopyrrolate	Robinol	48 hours	1 mg
Griseofulvin	Fulvacin	24 hours	No dose specified
Hyaluronic Acid	Legend	24 hours	IV administration only; no dose specified

Hydroxyzine	Atarax	96 hours	No dose specified
Ipratropium		48 hours	Via inhalation, no dose specified
Isoxsuprine	Vasodilan	48 hours	No dose specified
Ketoconazole	Nizoral	24 hours	No dose specified
Lidocaine		72 hours	200 mg total dose SQ
Mepivacaine	Carbocaine	72 hours	0.07 mg/kg SQ
Methocarbamol	Robaxin	48 hours	15 mg/kg single IV
Methylergonovine	Methergine	48 hours	No dose specified
Misoprostol	Cytotec	24 hours	No dose specified
Omeprazole	Gastrogard	24 hours	2.2 g orally once daily for 4 days
Omeprazole	Gastrogard	24 hours	2.2 g orally once daily for 4 days
Pentoxyfylline	Trental	48 hours	No dose specified
Phenytoin	Dilantin	96 hours	No dose specified
Ponazuril/Diclazuril/Sulfadiazine-Pyrimethamine	Marquis/Protazil	24 hours	Oral
Procaine Penicillin		48 hours	17 mg/kg IM Procaine penicillin treatments shall be reported to the stewards no later than twenty-four (24) hours after the last injection is administered. Horses so treated may be required to be under commission-approved, continuous surveillance for the six-hour interval prior to the post time for the race in which the horse is entered. The owner of the horse shall be responsible for all costs associated with the surveillance. Prospective surveillance arrangements shall be submitted to the stewards no later than close of business on the day of entry.
PSGAG	Adequan	24 hours	Via IM administration
Ranitidine	Zantac	24 hours	8 mg/kg orally twice daily for 7 doses
Reserpine	Serpasil	7 days	No dose specified
Romifidine	Sedivet	72 hours	50 mg via IV administration
Salmeterol		48 hours	Via inhalation, no dose specified
Sucralfate	Carafate	24 hours	No dose specified
Terbutaline		48 hours	No dose specified
Xylazine	Rompun	48 hours	200 mg via IV administration

(16) [~~(5)~~] NSAID withdrawal guidelines chart:

Substance	Brand Name	Recommended Minimum Withdrawal	Administration Specifications
Phenylbutazone	Butazolidin	48 hours—single elected NSAID. If this is not the single elected NSAID, then 7 days, pursuant to the European Horserace Scientific Liaison Committee.	4.4 mg/kg via IV administration
Flunixin	Banamine	48 hours—single elected NSAID. If this is not the single elected NSAID, then 6 days, pursuant to the European Horserace Scientific Liaison Committee.	1.1 mg/kg via IV administration
Ketoprofen	Ketofen	48 hours—single elected NSAID, If this is not the single elected NSAID, then 4 days, pursuant to the European Horserace Scientific Liaison Committee.	2.2 mg/kg via IV administration
Diclofenac	Surpass	7 days, pursuant to the European Horserace Scientific Liaison Committee.	5 inch ribbon of Surpass every 12 hours to one site
Firocoxib	Equioxx	15 days, pursuant to the European Horserace Scientific Liaison Committee.	0.1 mg/kg once daily for 4 days

(17)[~~(6)~~] Miscellaneous withdrawal guidelines chart:

Substance	Brand Name	Recommended Minimum Withdrawal	Administration Specifications
Anthemintics (except thiazide products		72 hours	
Non-androgenic reproductive hormones	Including HCG, Regumate, GnRH, in fillies and mares only	24 hours	
Proprionibacterium acnes suspension or comparable immunostimulants		24 hours	
Electrolytes, vitamins, minerals		24 hours	Via IV or IM administration
Antibiotics		24 hours	
Any injectable other than furosemide		24 hours	810 KAR 8:010 specifically prohibits any injections at less than 24 hours to post time for any substance.
Intra-articular injections, other than corticosteroids		72 hours	

Section 2. (1)[~~(7)~~] Available Threshold Levels Associated to KHRC Withdrawal Guidelines:

Substance	Threshold
Acepromazine	10 nanograms per ml in urine of hydroxyethylpromazine sulfoxide (HEPS)
Albuterol	1 nanogram per ml in urine
Boldenone Male horses other than Geldings	15 nanograms per ml in urine of boldenone, free and conjugated OR 25 picograms per ml in serum or plasma of boldenone, free
Boldenone Geldings and female Horses	1 nanogram per mil in urine of boldenone, free and conjugated
Butorphanol	2 nanograms per ml in serum or plasma of butorphanol, free OR 300 nanograms per ml in urine of total butorphanol
Cetirizine	6 nanograms per ml in serum or plasma
Cimetadine	400 nanograms per ml in serum or plasma
Clenbuterol	[~~140 picograms per ml of urine~~ ~~OR~~] Limit of detection in both urine and blood
Dantrolene	0.1 nanograms per ml of serum or plasma of 5-OH dantrolene
Detomidine	2 nanogram per ml in urine of carboxydetomidine OR 1 nanogram per ml of detomidine in serum or plasma
Diclofenac	5 nanograms per ml in serum or plasma
DMSO	10 micrograms per ml in serum or plasma
Firocoxib	20 nanograms per ml in serum or plasma
Flunixin	5 nanograms per ml in serum or plasma
Furosemide	For horses eligible to race on furosemide, 100 nanograms per ml in serum or plasma AND Urine specific gravity of less than 1.010 OR 1 nanogram per ml in serum or plasma for 2-year-olds beginning in 2020 or stakes horses beginning in 2021, see 810 KAR 8:010
Glycopyrrolate	3 picograms per ml in serum or plasma
Guaifenesin	12 nanograms per ml in serum or plasma
Ketoprofen	2 nanograms per ml of serum or plasma
Lidocaine	20 picograms per ml in serum or plasma of Total 3-OH-lidocaine
Mepivacaine	10 nanograms per ml in urine of OH-mepivicaine OR Limit of detection in serum or plasma
Methocarbamol	1 nanogram per ml in serum or plasma
Methylprednisolone	100 picograms per ml in serum or plasma
Nandrolone Male horses other than geldings	45 nanograms per ml in urine of 5α-estrane-3β, 17α-diol OR In urine a ratio of 5α estrane-3β, 17 α-diol to 5α estrene-3β, 17 α-diol of > 1:1
Nandrolone Geldings and female horses	1 nanogram per ml in urine of nandrolone, free and conjugated OR 50 picograms per ml of procaine in blood, serum, or plasma of nandrolone, free
Omeprazole	10 nanograms per ml omeprazole sulfide in serum or plasma
Phenylbutazone	0.3 micrograms per ml in serum or plasma
Prednisolone	10 nanograms per ml free Prednisolone in urine
Procaine Penicillin Horses reported to have been treated with procaine penicillin	25 nanograms per ml of procaine in serum or plasma Procaine penicillin treatments shall be reported to the stewards no later than 24 hours after the last injection is administered. Horses so treated may be required to be under KHRC approved, continuous surveillance for the six hour interval prior to the post time for the race in which the horse is entered. The owner of the horse shall be responsible for all costs associated with the surveillance. Prospective surveillance arrangements shall be submitted to the stewards no later than close of business on the day of entry.
Procaine Penicillin Horses not reported to have been treated with procaine penicillin	Limit of detection for procaine in serum or plasma [~~2 nanograms per ml of serum or plasma.~~] Procaine penicillin treatments shall be reported to the stewards no later than 24 hours after the last injection is administered. Horses so treated may be required to be under KHRC approved, continuous surveillance for the six hour interval prior to the post time for the race in which the horse is entered. The owner of the horse shall be responsible for all costs associated with the surveillance. Prospective surveillance arrangements shall be submitted to the stewards no later than close of business on the day of entry.
Ranitidine	40 nanograms per ml in serum or plasma
Testosterone Geldings	20 nanograms per ml in urine of testosterone, free and conjugated OR 25 picograms per ml in serum or plasma of testosterone, free
Testosterone Female horses (unless in foal)	55 nanograms per ml in urine of testosterone, free and conjugated OR 100 picograms per ml in serum or plasma of testosterone, free

Xylazine	200 picograms per ml in serum or plasma

(2)[~~(8)~~] All other NSAIDs not listed on the withdrawal guidelines shall have a threshold set at limit of detection in serum or plasma.

JONATHAN RABINOWITZ, Chair
RAY PERRY, Secretary

APPROVED BY AGENCY: October 19, 2021

FILED WITH LRC: October 21, 2021 at 11:54 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022 at 9:00 a.m. EST at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511 via Zoom. 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 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 11:59 p.m. EST on January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets recommended medication withdrawal guidelines and also sets mandatory medication threshold levels associated with those withdrawal guidelines.

(b) The necessity of this administrative regulation: This regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications before and during race meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants to horses prior to the horse participating in a race. This administrative regulation establishes the withdrawal guidelines and maximum thresholds for permitted drugs, medications, and substances that may be administered to race horses competing in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on and before racing dates, and in a manner that is consistent with the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: This amendment will correct a typographical errors, in order to clearly state the mandatory threshold levels for clenbuterol and procaine penicillin. Additionally, this amendment will correct numbering errors, which were discovered after filing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to effectuate the intent of the Commission and to ensure integrity, health, and safety in racing.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes maximum threshold for clenbuterol and procaine penicillin.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation ensures that clenbuterol and procaine penicillin are used appropriately on and before racing dates, and in a manner that is consistent with the integrity of racing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred and standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Participants in horse racing, and especially owners, trainers, and veterinarians, will be required to adhere to the requirements and rules set forth in the Withdrawal Guidelines and Available Threshold Levels, which pertain to the use of medications in horse racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No new costs are anticipated to comply with this administrative regulation, as Kentucky's licensees have operated in accordance with similar requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost 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: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, 230.300

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for the subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: NA

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Program Quality and Outcomes
(Amendment)

907 KAR 17:005. Definitions for 907 KAR Chapter 17.

RELATES TO: KRS Chapter 13B, 194A.025(3), 199.555(2), Chapter 202A, 205.8451-205.8483, 311.550(12), 314.011(7), 387.510(15), 620.020(5), 42 U.S.C. 1382c, 1395tt, 1396-1396w-5, 20 C.F.R. 416.2101, 42 C.F.R. 400.203, 405.2401(b), 412.62, Part 438, 440.40(b), 447.280, 482.58

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the definitions for 907 KAR Chapter 17.

Section 1. Definitions. (1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(2) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(3) "Adverse action" means:

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner; or

(e) The failure of a managed care organization to act within the timeframes provided in 42 C.F.R. 438.408(b).

(4) "Appeal" means a request for review of an adverse action or a decision by an MCO related to a covered service.

(5) "Authorized representative" means:

(a) For an enrollee who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the enrollee; or

(b) A legal guardian.

(6) "Behavioral health service" means a clinical, rehabilitative, or support service in an inpatient or outpatient setting to treat a mental illness, emotional disability, or substance use disorder.

(7) "Blind" is defined by 42 U.S.C. 1382c(a)(2).

(8) "Capitation payment" means the total per enrollee, per month payment amount the department pays an MCO.

(9) "Care coordination" means the integration of all processes in response to an enrollee's needs and strengths to ensure the:

(a) Achievement of desired outcomes; and

(b) Effectiveness of services.

(10) "Case management" means a collaborative process that:

(a) Assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet an enrollee's health and human service needs;

(b) Is characterized by advocacy, communication, and resource management;

(c) Promotes quality and cost-effective interventions and outcomes; and

(d) Is in addition to and not in lieu of targeted case management for individuals pursuant to 907 KAR Chapter 15.

(11) "CHFS OIG" means the Cabinet for Health and Family Services, Office of Inspector General.

(12) "Child" means a person who:

(a)1. Is under the age of eighteen (18) years;

2.a. Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and

b. Is expected to complete the program before the age of nineteen (19) years;

3. Is not self supporting;

4. Is not a participant in any of the United States Armed Forces; and

5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;

(b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(l)(1)(D);

(c) Is under the age of nineteen (19) years if the person is a KCHIP recipient; or

(d) Is under the age of twenty-one (21) years for EPSDT.

(13) "Complex or chronic condition" means a physical, behavioral, or developmental condition that:

(a) May have no known cure;

(b) Is progressive; or

(c) Can be debilitating or fatal if left untreated or under-treated.

(14) "Court-ordered commitment" means an involuntary commitment by an order of a court to a psychiatric facility for treatment pursuant to KRS Chapter 202A.

(15) "DAIL" means the Department for Aging and Independent Living.

(16) "DCBS" means the Department for Community Based Services.

(17) "Department" means the Department for Medicaid Services or its designee.

(18) "Disabled" is defined by 42 U.S.C. 1382c(a)(3).

(19) "DSM-IV" means a manual published by the American Psychiatric Association that covers all mental health disorders for both children and adults.

(20) "Dual eligible" means an individual eligible for Medicare and Medicaid benefits.

(21) "Early and periodic screening, diagnosis, and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b).

(22) "Emergency service" means "emergency services" as defined by 42 U.S.C. 1396u-2(b)(2)(B).

(23) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.

(24) "Family planning service" means a counseling service, a medical service, or a pharmaceutical supply or device to prevent or delay pregnancy.

(25) "Federally qualified health center" or "FQHC" is defined by

42 C.F.R. 405.2401(b).

(26) "Federally qualified health center look-alike" or "FQHC look-alike" means an entity that is currently approved by the United States Department of Health and Human Services, Health Resources and Services Administration, and the Centers for Medicare and Medicaid Services to be a federally qualified health center look-alike.

(27) "Fee-for-service" means a reimbursement model in which a health insurer reimburses a provider for each service provided to a recipient.

(28) "Foster care" is defined by KRS 620.020(5).

(29) "Fraud" means any act that constitutes fraud under applicable federal law or KRS 205.8451 to KRS 205.8483.

(30) "Grievance" is defined by 42 C.F.R. 438.400(b).

(31) "Homeless individual" means an individual who:

(a) Lacks a fixed, regular, or nighttime residence;

(b) Is at risk of becoming homeless in a rural or urban area because the residence is not safe, decent, sanitary, or secure;

(c) Has a primary nighttime residence at a:

1. Publicly or privately operated shelter designed to provide temporary living accommodations; or

2. Public or private place not designed as regular sleeping accommodations; or

(d) Lacks access to normal accommodations due to violence or the threat of violence from a cohabitant.

(32) "Individual with a special health care need" or "ISHCN" means an individual who:

(a) Has, or is at a high risk of having, a chronic physical, developmental, behavioral, neurological, or emotional condition; and

(b) May require a broad range of primary, specialized, medical, behavioral health, or related services.

(33) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

(34) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(35) "Maternity care" means prenatal, delivery, and postpartum care and includes care related to complications from delivery.

(36) [~~"Medicaid works individual" means an individual who:~~

~~(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving SSI benefits;~~

~~(b) Is at least sixteen (16), but less than sixty-five (65), years of age;~~

~~(c) Is engaged in active employment verifiable with:~~

~~1. Paycheck stubs;~~

~~2. Tax returns;~~

~~3. 1099 forms; or~~

~~4. Proof of quarterly estimated tax;~~

~~(d) Meets the income standards established in 907 KAR 20:020; and~~

~~(e) Meets the resource standards established in 907 KAR 20:025.~~

~~(37)~~] "Medical record" means a single, complete record that documents all of the treatment plans developed for, and medical services received by, an individual.

(37)[~~(38)~~] "Medicare qualified individual group 1 (QI-1)" means an eligibility category that includes, pursuant to 42 U.S.C. 1396a(a)(10)(E)(iv), an individual who would be a Qualified Medicaid beneficiary but for the fact that the individual's income:

(a) Exceeds the income level established in accordance with 42 U.S.C. 1396d(p)(2); and

(b) Is at least 120 percent, but less than 135 percent, of the federal poverty level for a family of the size involved and who is not otherwise eligible for Medicaid under the state plan.

(38)[~~(39)~~] "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3.

(39)[~~(40)~~] "Nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted a nursing facility license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), and (d) and 42 C.F.R. 447.280 and 482.58.

(40)[~~(41)~~] "Olmstead decision" means the court decision of Olmstead v. L.C. and E.W., U.S. Supreme Court, No. 98–536, June 26, 1999 in which the U.S. Supreme Court ruled, "For the reasons stated, we conclude that, under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."

(41)[~~(42)~~] "Open enrollment" means an annual period during which an enrollee can choose a different MCO.

(42)[~~(43)~~] "Out-of-network provider" means a person or entity that has not entered into a participating provider agreement with an MCO or any of the MCO's subcontractors.

(43)[~~(44)~~] "Physician" is defined by KRS 311.550(12).

(44)[~~(45)~~] "Post-stabilization services" means covered services related to an emergency medical condition that are provided to an enrollee:

(a) After an enrollee is stabilized in order to maintain the stabilized condition; or

(b) Under the circumstances described in 42 C.F.R. 438.114(e) to improve or resolve the enrollee's condition.[

~~(46) "Primary care center" means an entity that meets the primary care center requirements established in 902 KAR 20:058.~~]

(45)[~~(47)~~] "Primary care provider" or "PCP" means a licensed or certified health care practitioner who meets the description as established in 907 KAR 17:010, Section 6(6).

(46)[~~(48)~~] "Prior authorization" means the advance approval by an MCO of a service or item provided to an enrollee.

(47)[~~(49)~~] "Provider" means any person or entity under contract with an MCO or its contractual agent that provides covered services to enrollees.

(48)[~~(50)~~] "Provider network" means the group of physicians, hospitals, and other medical care professionals that a managed care organization has contracted with to deliver medical services to its enrollees.

(49)[~~(51)~~] "QAPI" means the Quality Assessment and Performance Improvement Program established in accordance with 42 C.F.R. 438 Subpart D, 438.206 to 438.242.

(50)[~~(52)~~] "Qualified alien" means an alien who, at the time of applying for or receiving Medicaid benefits, meets the requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3.

(51)[~~(53)~~] "Qualified disabled and working individual" is defined by 42 U.S.C. 1396d(s).

(52)[~~(54)~~] "Qualified Medicare beneficiary" or "QMB" is defined by 42 U.S.C. 1396d(p)(1).

(53)[~~(55)~~] "Recipient" is defined by KRS 205.8451(9).

(54)[~~(56)~~] "Rural area" means an area not in an urban area.

(55)[~~(57)~~] "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).

(56)[~~(58)~~] "Specialist" means a provider who provides specialty care.

(57)[~~(59)~~] "Specialty care" means care or a service that is provided by a provider who is not:

(a) A primary care provider; or

(b) Acting in the capacity of a primary care provider while providing the service.

(58)[~~(60)~~] "Specified low-income Medicare beneficiary" means an individual who meets the requirements established in 42 U.S.C. 1396a(a)(10)(E)(iii).

(59)[~~(61)~~] "State fair hearing" means an administrative hearing provided by the Cabinet for Health and Family Services pursuant to KRS Chapter 13B.

(60)[~~(62)~~] "State plan" is defined by 42 C.F.R. 400.203.

(61)[~~(63)~~] "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care Facilities and Services.

(62)[~~(64)~~] "State-funded adoption assistance" is defined by KRS 199.555(2).

(63)[~~(65)~~] "Supplemental security income benefits" or "SSI benefits" is defined by 20 C.F.R. 416.2101(c).

(64)[~~(66)~~]"Third party liability resource" means a resource available to an enrollee for the payment of expenses:

(a) Associated with the provision of covered services; and

(b) That does not include amounts exempt under Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396w-5.

(65)[~~(67)~~] "Transport time" means travel time:

(a) Under normal driving conditions; and

(b) With no extenuating circumstances.

(66)[~~(68)~~]"Urban area" is defined by 42 C.F.R. 412.62(f)(1)(ii).

(67)[~~(69)~~] "Urgent care" means care for a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

(68)[~~(70)~~] "Ward" is defined by KRS 387.510(15).

LISA LEE, Commissioner
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 26, 2021

FILED WITH LRC: November 12, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 24, 2022, 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 January 14, 2022, 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 January 31, 2022. 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: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for 907 KAR Chapter 17, which relates to managed care

(b) The necessity of this administrative regulation: This definitions administrative regulation is necessary to define the terms used in 907 KAR Chapter 17, in accordance with KRS 13A.222(4)(d) and (e).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. KRS 13A.222(4)(d) and (e) authorize the use of definitions for terms used within a chapter of the Kentucky Administrative Regulations Service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the definitions for terms used throughout 907 KAR Chapter 17. Defining the terms will lead to less confusion as the regulated community will know the meanings of common terms.

(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 907 KAR 17:005 removes the phrase “Medicaid Works individual” to reflect the ending of that program, and “primary care center” is removed to reflect the removal of licensure for that facility type.

(b) The necessity of the amendment to this administrative regulation: The amendments to this definitions administrative regulation are necessary to reflect the ending of the Medicaid Works program, and to reflect a statutory change to eligible facility licensure types.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by reflecting the ending of the Medicaid Works program, and a statutory modification to eligible facility licensure types.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the definitions for terms used throughout 907 KAR Chapter 17, while complying with KRS 13A.222 and providing correct cross-references. Additionally, defining the terms will lead to less confusion as the regulated community will know the meanings of common terms. Finally, this amendment will assist in the effective administration of the statues by reflecting current state law as it relates to facility licensure and the Medicaid Works program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Medicaid providers and all six managed care organizations will be affected by this administrative regulation. Since the creation of the Medicaid Works program in 2007, only 15 different people have ever used it. Currently, there are only 5 beneficiaries using the program, and DMS intends to otherwise accommodate this population within the existing healthcare system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are not any actions that regulated entities will have to take to comply with this amendment as it simply updates the definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not any costs to complying with the changes to this definitions administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Medicaid providers and six managed care organizations will receive the benefit of updated (and corrected) cross-references.

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

(a) Initially: There are no costs to implementing the definitions administrative regulation either initially or on a continuing basis.

(b) On a continuing basis: There are no costs to implementing the definitions administrative regulation either initially or on a continuing basis.

(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 907 KAR Chapter 17 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: An increase in fees or funding is not necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes definitions for terms used in 907 KAR Chapter 17.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate. It merely establishes definitions, not requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate. It merely establishes definitions, not 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? Cabinet for Health and Family Services, 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.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438.

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

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

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in the implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in the continuing operation of this administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Program Quality and Outcomes
(Amendment)

907 KAR 17:010. Managed care organization requirements and policies relating to enrollees.

RELATES TO: KRS Chapter 13B, 194A.025(3), 205.624, 311.621-311.643, 387.500-387.800, 42 U.S.C. 1396a, 1396n, 1396u-2, 42 C.F.R. 422.112, 422.113, 431.51, 431.200-431.250, 433.138, Part 438, 45 C.F.R. 233.100

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

Section 1. Enrollment of Medicaid or KCHIP Recipients into Managed Care. (1) Except as provided in subsection (3) of this section, enrollment into a managed care organization shall be mandatory for a Medicaid or KCHIP recipient.

(2) The provisions in this administrative regulation shall be applicable to a:

(a) Medicaid recipient; or

(b) KCHIP recipient.

(3) The following recipients shall not be required to enroll, and shall not enroll, into a managed care organization:

(a) A recipient who resides in:

1. A nursing facility for more than thirty (30) calendar days; or

2. An intermediate care facility for individuals with an intellectual disability; or

(b) A recipient who is:

1. Determined to be eligible for Medicaid benefits due to a nursing facility admission;

2. Receiving:

a. Services through the breast and cervical cancer program pursuant to 907 KAR 20:055;

b. Medicaid benefits in accordance with the spend-down policies established in 907 KAR 20:020;

c. Services through a 1915(c) home and community based services waiver program; <u>or</u>

d. Hospice services in a nursing facility or intermediate care facility for individuals with an intellectual disability; [~~or~~

~~e. Medicaid benefits as a Medicaid Works individual;~~]

3. A Qualified Medicare beneficiary who is not otherwise eligible for Medicaid benefits;

4. A specified low-income Medicare beneficiary who is not otherwise eligible for Medicaid benefits;

5. A Medicare qualified individual group 1 (QI-1) individual;

6. A qualified disabled and working individual;

7. A qualified alien eligible for Medicaid benefits for a limited period of time; or

8. A nonqualified alien eligible for Medicaid benefits for a limited period of time.

(4)(a) The department shall assign a recipient to an MCO based upon an algorithm that considers:

1. Continuity of care; and

2. Enrollee preference of an MCO provider.

(b) An assignment shall focus on a need of a child or an

individual with a special health care need.

(5)(a) A newly eligible recipient or a recipient who has had a break in eligibility of greater than two (2) months shall have an opportunity to choose an MCO during the eligibility application process.

(b) If a recipient does not choose an MCO during the eligibility application process, the department shall assign the recipient to an MCO in accordance with subsections (4) and (6) of this section.

(6) Each member of a household shall be assigned to the same MCO.

(7) The effective date of enrollment for a recipient described in subsection (5) of this section shall be the date of Medicaid eligibility.

(8) A recipient shall be given a choice of MCOs.

(9) A recipient enrolled with an MCO who loses Medicaid eligibility for less than two (2) months shall be automatically reenrolled with the same MCO upon redetermination of Medicaid eligibility.

(10) A newborn who has been deemed eligible for Medicaid shall be automatically enrolled with the newborn's mother's MCO as an individual enrollee for up to sixty (60) calendar days.

(11)(a) An enrollee may change an MCO for any reason, regardless of whether the MCO was selected by the enrollee or assigned by the department:

1. Within ninety (90) calendar days of the effective date of enrollment;

2. Annually during an open enrollment period;

3. Upon automatic enrollment under subsection (9) of this section, if a temporary loss of Medicaid eligibility caused the recipient to miss the annual opportunity in subparagraph 2. of this paragraph; or

4. When the Commonwealth of Kentucky imposes an intermediate sanction specified in 42 C.F.R. 438.702(a)(3).

(b) An MCO shall accept an enrollee who changes MCOs under this section.

(12) Only the department may enroll a Medicaid recipient with an MCO in accordance with this section.

(13) Upon enrollment with an MCO, an enrollee shall receive an identification card issued by the MCO.

(14)(a) Within five (5) business days after receipt of notification of a new enrollee, an MCO shall send, by a method that shall not take more than three (3) calendar days to reach the enrollee, a confirmation letter to an enrollee.

(b) The confirmation letter shall include at least the following information:

1. The effective date of enrollment;

2. The name, location, and contact information of the PCP;

3. How to obtain a referral;

4. Care coordination;

5. The benefits of preventive health care;

6. The enrollee identification card;

7. A member handbook; and

8. A list of covered services.

(15) Enrollment with an MCO shall be without restriction.

(16) An MCO shall:

(a) Have continuous open enrollment for new enrollees; and

(b) Accept enrollees regardless of overall enrollment.

(17)(a) Except as provided in paragraphs (b) through (e) of this subsection, a recipient eligible to enroll with an MCO shall be enrolled beginning with the first day of the month that the enrollee applied for Medicaid.

(b) A newborn shall be enrolled beginning with the newborn's date of birth.

(c) An unemployed parent shall be enrolled beginning with the date the unemployed parent met the definition of unemployment in accordance with 45 C.F.R. 233.100.

(d)1. Except as provided in paragraph (e) of this subsection, if an enrollee is retroactively determined eligible for Medicaid, the retroactive eligibility shall be for a period up to three (3) months prior to the month that the enrollee applied for Medicaid.

2. An MCO shall be responsible for reimbursing for covered services provided to a retroactively determined eligible individual referenced in subparagraph 1. of this paragraph during the individual's retroactive eligibility period.

(e) If an enrollee is retroactively determined eligible for Medicaid as a result of being determined retroactively eligible for SSI benefits:

1. The individual's enrollment date with an MCO shall be the first of the month following the month in which the department is notified of the individual's retroactive eligibility for SSI benefits; and

2. The department shall be responsible for reimbursing for any services provided during the retroactive eligibility period for an individual determined to be retroactively eligible for SSI benefits.

(18) For an enrollee whose eligibility resulted from a successful appeal of a denial of eligibility, the enrollment period shall begin:

(a) On the first day of the month of the original application for eligibility; or

(b) On the first day of the month of retroactive eligibility as referenced in subsection (17)(d) or (e) of this section, if applicable.

(19) A provider shall be responsible for verifying an individual's eligibility for Medicaid and enrollment in a managed care organization when providing a service.

Section 2. Disenrollment. (1) The policies established in 42 C.F.R. 438.56 shall apply to an MCO.

(2) Only the department may disenroll a recipient from an MCO.

(3) A disenrollment of a recipient from an MCO shall occur:

(a) If the enrollee:

1. Becomes incarcerated or deceased; or

2. Is exempt from managed care enrollment in accordance with Section 1(3) of this administrative regulation; or

(b) In accordance with 42 C.F.R. 438.56.

(4) An MCO may recommend to the department that an enrollee be disenrolled if the enrollee:

(a) Is found guilty of fraud in a court of law or administratively determined to have committed fraud related to the Medicaid Program;

(b) Is abusive or threatening but not for uncooperative or disruptive behavior resulting from his or her special needs (except if his or her continued enrollment in the MCO seriously impairs the entity's ability to furnish services to either this particular enrollee or other enrollees) pursuant to 42 C.F.R. 438.56(b)(2); or

(c) Becomes deceased.

(5) An enrollee shall not be disenrolled by the department, nor shall the managed care organization recommend disenrollment of an enrollee, due to an adverse change in the enrollee's health.

(6)(a) An approved disenrollment shall be effective no later than the first day of the second month following the month the enrollee or the MCO files a request in accordance with 42 C.F.R. 438.56(e)(1).

(b) If the department fails to make a determination within the timeframe specified in paragraph (a) of this subsection, the disenrollment shall be considered approved in accordance with 42 C.F.R. 438.56(e)(2).

(7) If an enrollee is disenrolled from an MCO, the:

(a) Enrollee shall be enrolled with a new MCO if the enrollee is:

1. Eligible for Medicaid; and

2. Not excluded from managed care participation; and

(b) MCO shall:

1. Assist in the selection of a new primary care provider, if requested;

2. Cooperate with the new primary care provider in transitioning the enrollee's care; and

3. Make the enrollee's medical record available to the new primary care provider in accordance with state and federal law.

(8) An MCO shall notify the department or Social Security Administration in an enrollee's county of residence within five (5) working days of receiving notice of the death of an enrollee.

Section 3. Enrollee Rights and Responsibilities. An MCO shall have written policies and procedures to protect the rights of an enrollee that meets the information requirements established in 42 C.F.R. 438.10.

Section 4. MCO Internal Appeal Process. (1) An enrollee may

file a grievance orally or in writing with the MCO at any time.

(a) Within five (5) working days of receipt of a grievance, an MCO shall provide the enrollee with written notice that the grievance has been received and the expected date of its resolution.

(b) An investigation and final resolution of a grievance shall:

1. Be completed within thirty (30) calendar days of the date the grievance is received by the MCO; and

2. Include a resolution letter to the enrollee that shall include:

a. All information considered in investigating the grievance;

b. Findings and conclusions based on the investigation; and

c. The disposition of the grievance.

(2) An MCO shall have an internal appeal process in place that allows an enrollee to challenge a denial of coverage of, or payment for, a service in accordance with 42 C.F.R. 438.400 through 438.424 and 42 U.S.C. 1396u-2(b)(4).

(3)(a) A provider shall not be an authorized representative of an enrollee without the enrollee's written consent for the specific action that is being appealed or that is the subject of a state fair hearing.

(b)1. For authorized representative purposes, written consent unique to an appeal or state fair hearing shall be required for the appeal or state fair hearing.

2. A single written consent shall not qualify as written consent for more than one (1):

a. Hospital admission;

b. Physician or other provider visit; or

c. Treatment plan.

(4) A legal guardian of an enrollee who is a minor or an incapacitated adult or an authorized representative of an enrollee in accordance with subsection (3) of this section may file an appeal on behalf of the enrollee.

(5) An enrollee shall have sixty (60) calendar days from the date of receiving a notice of adverse action from an MCO to file an appeal either orally or in writing with the MCO.

(6) An MCO shall resolve an appeal within thirty (30) calendar days from the date the initial oral or written appeal is received by the MCO.

(7) An MCO shall have a process in place that ensures that an oral or written inquiry from an enrollee seeking to appeal an adverse action is treated as an appeal to establish the earliest possible filing date for the appeal.

(8) An oral appeal shall be followed by a written appeal that is signed by the enrollee or an individual listed in subsection (4) of this section within ten (10) calendar days.

(9)(a) Within five (5) working days of receipt of an appeal, an MCO shall provide the enrollee with written notice that the appeal has been received and the expected date of its resolution. A copy of this information shall also be sent to an individual listed in subsection (4) of this section, if applicable.

(b) An MCO shall confirm in writing receipt of an oral appeal unless an expedited resolution has been requested.

(10) An MCO shall extend the thirty (30) day timeframe for resolution of an appeal established in subsection (6) of this section by fourteen (14) calendar days if:

(a) The enrollee requests the extension; or

(b)1. The MCO demonstrates to the department that there is need for additional information; and

2. The extension is in the enrollee's interest.

(11) For an extension requested by an MCO, the MCO shall give the enrollee written notice of the extension and the reason for the extension within two (2) working days of the decision to extend.

(12)(a) For an appeal, an MCO shall provide written notice of its decision within thirty (30) calendar days to an enrollee or a provider, if the provider filed the appeal.

(b) The provider shall:

1. Give a copy of the notice to the enrollee; or

2. Inform the enrollee of the provisions of the notice.

(13) An MCO shall:

(a) Continue to provide benefits to an enrollee, if the enrollee requested a continuation of benefits, until one (1) of the following occurs:

1. The enrollee withdraws the appeal;

2. Fourteen (14) calendar days have passed since the date of the resolution letter, if the resolution of the appeal was against the enrollee and the enrollee has not requested a state fair hearing or taken any further action; or

3. A state fair hearing decision adverse to the enrollee has been issued;

(b) Have an expedited review process for appeals if the MCO determines that allowing the time for a standard resolution could seriously jeopardize an enrollee's life or health or ability to attain, maintain, or regain maximum function;

(c) Resolve an expedited appeal within three (3) working days of receipt of the request; and

(d) Extend the timeframe for an expedited appeal established in paragraph (c) of this subsection by up to fourteen (14) calendar days if:

1. The enrollee requests the extension; or

2.a. The MCO demonstrates to the department that there is need for additional information; and

b. The extension is in the enrollee's interest.

(14) For an extension requested by an MCO, the MCO shall give the enrollee written notice of the reason for the extension.

(15) If an MCO denies a request for an expedited resolution of an appeal, the MCO shall:

(a) Transfer the appeal to the thirty (30) day timeframe for a standard resolution, in which the thirty (30) day period shall begin on the date the MCO received the original request for appeal;

(b) Give prompt oral notice of the denial; and

(c) Follow up with a written notice within two (2) calendar days of the denial.

(16) An MCO shall document in writing an oral request for an expedited resolution and shall maintain the documentation in the enrollee case file.

(17) If an MCO takes adverse action at the conclusion of an internal appeal process, the MCO shall issue an adverse action letter to the enrollee that complies with KRS 13B.050(3)(d) and (e).

(18)(a) The requirements and policies stated in this section regarding an MCO appeal shall apply to an MCO.

(b) If a requirement or policy regarding an appeal or an MCO appeal stated in another Kentucky administrative regulation within Title 907 of the Kentucky Administrative Regulations contradicts a requirement or policy regarding an MCO appeal that is stated in this section, the requirement or policy stated in the other administrative regulation shall not apply to an MCO.

Section 5. Department's State Fair Hearing for an Enrollee. (1) An enrollee may have a state fair hearing administered by the department in accordance with KRS Chapter 13B only after exhausting an MCO's internal appeal process.

(2) The department shall provide an enrollee with a hearing process that shall adhere to 907 KAR 1:563; 42 C.F.R. 438, Subpart F (438.400-438.424); and 42 C.F.R. 431, Subpart E (431.200-431.250).

(3)(a) An enrollee or authorized representative may request a state fair hearing by filing a written request with the department.

(b) If an enrollee or authorized representative requests a hearing, the request shall:

1. Be in writing and specify the reason for the request;

2. Indicate the date of service or the type of service denied; and

3. Be postmarked or filed within 120 calendar days from the date of the MCO adverse action letter issued at the conclusion of the MCO internal appeal process.

(4) A document supporting an MCO's adverse action shall be:

(a) Received by the department no later than five (5) calendar days from the date the MCO receives a notice from the department that a request for a state fair hearing has been filed by an enrollee; and

(b) Made available to an enrollee upon request by either the enrollee or the enrollee's legal counsel.

(5) An automatic ruling shall be made by the department in favor of an enrollee if an MCO fails to:

(a) Comply with the requirements of:

1. Section 4 of this administrative regulation; or

2. Subsection (4) of this section; or

(b) Participate in and present evidence at the state fair hearing.

Section 6. Enrollee Selection of Primary Care Provider. (1) Except for an enrollee described in subsection (2) of this section, an MCO shall have a process for enrollee selection and assignment of a primary care provider.

(2) The following shall not be required to have, but may request, a primary care provider:

(a) A dual eligible;

(b) A child in foster care;

(c) A child under the age of eighteen (18) years who is disabled;

(d) A pregnant woman who is presumptively eligible pursuant to 907 KAR 20:050; or

(e) An adult for whom the state is appointed a guardian.

(3)(a) For an enrollee who is not receiving supplemental security income benefits:

1. An MCO shall notify the enrollee within ten (10) calendar days of notification of enrollment by the department of the procedure for choosing a primary care provider; and

2. If the enrollee does not choose a primary care provider, an MCO shall assign to the enrollee a primary care provider who:

a. Has historically provided services to the enrollee; and

b. Meets the requirements of subsection (6) of this section.

(b) If no primary care provider meets the requirements of paragraph (a)2. of this subsection, an MCO shall assign the enrollee to a primary care provider who is within:

1. Thirty (30) miles or thirty (30) minutes from the enrollee's residence if the enrollee is in an urban area; or

2. Forty-five (45) miles or forty-five (45) minutes from the enrollee's residence if the enrollee is in a rural area.

(4)(a) For an enrollee who is receiving supplemental security income benefits and
is not a dual eligible, an MCO shall notify the enrollee of the procedure for choosing a primary care provider.

(b) If an enrollee has not chosen a primary care provider within thirty (30) calendar days, an MCO shall send a second notice to the enrollee.

(c) If an enrollee has not chosen a primary care provider within thirty (30) calendar days of the second notice, the MCO shall send a third notice to the enrollee.

(d) If an enrollee has not chosen a primary care provider within thirty (30) calendar days after the third notice, the MCO shall assign a primary care provider.

(e) Except for an enrollee who was previously enrolled with the MCO, an MCO shall not automatically assign a primary care provider within ninety (90) calendar days of the enrollee's initial enrollment.

(5)(a) An enrollee may select from at least two (2) primary care providers within an MCO's provider network.

(b) At least one (1) of the two (2) primary care providers referenced in paragraph (a) of this subsection shall be a physician.

(6) A primary care provider shall:

(a) Be a licensed or certified health care practitioner who functions within the provider's scope of licensure or certification, including:

1. A physician;

2. An advanced practice registered nurse;

3. A physician assistant; or

4. A clinic, including a primary care center, federally qualified health center, federally qualified health center look-alike, or rural health clinic;

(b) Have admitting privileges at a hospital or a formal referral agreement with a provider possessing admitting privileges;

(c) Agree to provide twenty-four (24) hours a day, seven (7) days a week primary health care services to enrollees; and

(d) For an enrollee who has a gynecological or obstetrical health care need, a disability, or chronic illness, be a specialist who agrees to provide or arrange for primary and preventive care.

(7) Upon enrollment in an MCO, an enrollee may change primary care providers:

(a) Within the first ninety (90) calendar days of assignment;

(b) Once a year regardless of reason;

(c) At any time for a reason approved by the MCO;

(d) If, during a temporary loss of eligibility, an enrollee loses the opportunity provided by paragraph (b) of this subsection;

(e) If Medicare or Medicaid imposes a sanction on the PCP;

(f) If the PCP is no longer in the MCO provider network; or

(g) At any time with cause, which shall include the enrollee:

1. Receiving poor quality of care;

2. Lacking access to providers qualified to treat the enrollee's medical condition; or

3. Being denied access to needed medical services.

(8) A PCP shall not be able to request the reassignment of an enrollee to a different PCP for the following reasons:

(a) A change in the enrollee's health status or treatment needs;

(b) An enrollee's utilization of health services;

(c) An enrollee's diminished mental capacity; or

(d) Disruptive behavior of an enrollee due to the enrollee's special health care needs unless the behavior impairs the PCP's ability to provide services to the enrollee or others.

(9) A PCP change request shall not be based on race, color, national origin, disability, age, or gender.

(10) An MCO may approve or deny a primary care provider change.

(11) An enrollee shall be able to obtain the following services outside of an MCO's provider network:

(a) A family planning service in accordance with 42 C.F.R. 431.51;

(b) An emergency service in accordance with 42 C.F.R. 438.114;

(c) A post-stabilization service in accordance with 42 C.F.R. 438.114 and 42 C.F.R. 422.113(c); or

(d) An out-of-network service that an MCO is unable to provide within its network to meet the medical need of the enrollee in accordance with 42 C.F.R. 438.206(b)(4) subject to any prior authorization requirements of the MCO.

(12) An MCO shall:

(a) Notify an enrollee within:

1. Thirty (30) calendar days of the effective date of a voluntary termination of the enrollee's primary care provider; or

2. Fifteen (15) calendar days of an involuntary termination of the enrollee's primary care provider; and

(b) Assist the enrollee in selecting a new primary care provider.

Section 7. Member Handbook. An MCO shall send a member handbook to an enrollee as required by 42 C.F.R. 438.10.

Section 8. Enrollee Non-Liability and Liability for Payment. (1)(a) Except as specified in Section 9 of this administrative regulation, an enrollee shall not be required to pay for a medically necessary covered service provided by the enrollee's MCO.

(b) An enrollee may be liable for the costs of services received during an appeal process in accordance with:

1. 42 C.F.R. 431.230; or

2. 42 C.F.R. 438.404.

(2) An MCO shall not impose cost sharing on an enrollee greater than the limits established by the department in 907 KAR 1:604.

Section 9. Recoupment of Payment from an Enrollee for Fraud, Waste, or Abuse. (1) If an enrollee is determined to be ineligible for Medicaid through an administrative hearing or adjudication of fraud by the CHFS OIG, the department shall recoup a capitation payment it has made to an MCO on behalf of the enrollee.

(2) An MCO shall request a refund from the enrollee referenced in subsection (1) of this section of a payment the MCO has made to a provider for the service provided to the enrollee.

(3) If an MCO has been unable to collect a refund referenced in subsection (2) of this section within six (6) months, the commonwealth may recover the refund from the enrollee.

Section 10. Third Party Liability and Coordination of Benefits. (1) Medicaid shall be the payer of last resort for a service provided to an enrollee.

(2) An MCO shall:

(a) Exhaust a payment by a third party prior to payment for a service provided to an enrollee;

(b) Be responsible for determining a legal liability of a third party to pay for a service provided to an enrollee;

(c) Actively seek and identify a third party liability resource to pay for a service provided to an enrollee in accordance with 42 C.F.R. 433.138; and

(d) Assure that Medicaid shall be the payer of last resort for a service provided to an enrollee.

(3) In accordance with 907 KAR 20:005 and KRS 205.624, an enrollee shall:

(a) Assign, in writing, to the MCO the enrollee's rights to a medical support or payment from a third party for a medical service paid for by the MCO; and

(b) Cooperate with an MCO in identifying and providing information to assist the MCO in pursuing a third party that may be liable for care or services.

(4) If an MCO becomes aware of a third party liability resource after payment for a service provided to an enrollee, the MCO shall seek recovery from the third party resource.

Section 11. Legal Guardians. (1) A parent, custodial parent, person exercising custodial control or supervision, or an agency with a legal responsibility for a child by virtue of a voluntary commitment or of an emergency or temporary custody order may act on behalf of an enrollee who is under the age of eighteen (18) years, a potential enrollee, or a former enrollee for the purpose of:

(a) Selecting a primary care provider;

(b) Filing a grievance or appeal; or

(c) Taking an action on behalf of the child regarding an interaction with an MCO.

(2)(a) A legal guardian who has been appointed pursuant to KRS 387.500 to 387.800 may act on behalf of an enrollee who is a ward of the commonwealth.

(b) A person authorized to make a health care decision pursuant to KRS 311.621 to 311.643 may act on behalf of an enrollee, potential enrollee, or former enrollee in making the health care decisions.

(c) An enrollee may:

1. Represent the enrollee; or

2. Use legal counsel, a relative, a friend, or other spokesperson.

Section 12. Enrollees with Special Health Care Needs. (1)(a) In accordance with 42 C.F.R. 438.208, the following shall be considered an individual with a special health care need:

1. A child in or receiving foster care or state-funded adoption assistance;

2. A homeless individual;

3. An individual with a chronic physical or behavioral illness;

4. A blind or disabled child;

5. An individual who is eligible for SSI benefits; or

6. An adult who is a ward of the Commonwealth in accordance with 910 KAR Chapter 2.

(b) In accordance with 42 C.F.R. 438.208, an MCO shall:

1. Have a process to target enrollees for the purpose of screening and identifying those with special health care needs;

2. Assess each enrollee identified by the department as having a special health care need to determine if the enrollee needs case management or regular care monitoring;

3. Include the use of appropriate health care professionals to perform an assessment; and

4. Have a treatment plan for an enrollee with a special health care need who has been determined, through an assessment, to need a course of treatment or regular care monitoring.

(c)1. An enrollee who is a child in foster care shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DCBS prior to being enrolled with the MCO.

2.a. The service plan referenced in subparagraph 1. of this paragraph shall be used by DCBS and the MCO to determine the enrollee's medical needs and to identify if there is a need for case management.

b. The MCO shall be available to meet with DCBS at least quarterly to discuss the health care needs of the child as identified in the service plan. The child's caretaker may attend each meeting held to discuss the health care needs of that child.

c. If a service plan identifies the need for case management or DCBS requests case management for an enrollee, the foster parent of the child or DCBS shall work with the MCO to develop a case management plan of care.

d. The MCO shall consult with DCBS prior to developing or modifying a case management plan of care.

e. If the service plan accomplishes a requirement stated in paragraph (b) of this subsection, the requirement stated in paragraph (b) shall be considered to have been met.

(2) A treatment plan referenced in subsection (1)(b)4. of this section shall be developed:

(a) With participation from the enrollee or the enrollee's legal guardian as referenced in Section 11 of this administrative regulation; and

(b) By the enrollee's primary care provider, if the enrollee has a primary care provider.

(3) An MCO shall:

(a)1. Develop materials specific to the needs of an enrollee with a special health care need; and

2. Provide the materials referenced in subparagraph 1. of this paragraph to the enrollee, caregiver, parent, or legal guardian;

(b) Have a mechanism to allow an enrollee identified as having a special health care need to directly access a specialist, as appropriate, for the enrollee's condition and identified need; and

(c) Be responsible for the ongoing care coordination for an enrollee with a special health care need.

(4) The information referenced in subsection (3)(a) of this section shall include health educational material to assist the enrollee with a special health care need or the enrollee's caregiver, parent, or legal guardian in understanding the enrollee's special need.

(5)(a) An enrollee who is a ward of the commonwealth shall be enrolled with an MCO through a service plan that shall be completed for the enrollee by DAIL prior to being enrolled with the MCO.

(b) If the service plan referenced in paragraph (a) of this subsection identifies the need for case management, the MCO shall work with DAIL or the enrollee to develop a case management plan of care.

Section 13. Second Opinion. An enrollee may get a second opinion within the MCO's provider network for a surgical procedure or diagnosis and treatment of a complex or chronic condition.

Section 14. Managed Care Requirements. (1) All aspects of managed care shall be governed and controlled by the applicable federal and state laws, including 42 C.F.R. Part 438, 42 U.S.C. 1396n, and 42 U.S.C. 1396u-2, and the negotiated terms of the contract between a managed care organization and the department.

(2) The current MCO contracts shall be posted on the department's Web site at https://chfs.ky.gov/agencies/dms/dpgo/Pages/mco-contracts.aspx [~~http://chfs.ky.gov/dms/contracts.htm~~].

Section 15. Centers for Medicare and Medicaid Services Approval and Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies or does not provide federal financial participation for the policy; or

(2) Disapproves the policy.

LISA LEE, Commissioner
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 26, 2021

FILED WITH LRC: November 12, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 24, 2022, 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 January 14, 2022, 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 January 31, 2022. 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: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.520(3), 42 U.S.C. 1396n(b), and 42 C.F.R. Part 438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(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 managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

(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 removes references to the Medicaid Works program to reflect the ending of that program. Medicaid Works recipients are being transferred into the expansion Medicaid population. In addition, a website link has been updated.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to reflect the ending of the Medicaid Works program, and to update a technical reference to a website.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by removing a reference to a discontinued program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Since the creation of the Medicaid Works program in 2007, only 15 different people have ever used it. Currently, there are only 5 beneficiaries using the program, and DMS intends to otherwise accommodate this population within the existing healthcare system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are not any actions that regulated entities will have to take to comply with this amendment that are not already required by the negotiated terms of the MCO contracts.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are not any costs to complying with the changes to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): DMS anticipates that current beneficiaries will remain in the Medicaid Program.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of 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 907 KAR Chapter 17 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: An increase in fees or funding is not necessary to implement this amendment.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438

2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care. This administrative regulation establishes the managed care organization requirements and policies relating to individuals enrolled with a Medicaid managed care organization.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Cabinet for Health

and Family Services, 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.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1396n(b), 42 C.F.R. Part 438.

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

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

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

(c) How much will it cost to administer this program for the first year? DMS does not anticipate additional costs in administering this program in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate additional costs in administering this program in subsequent years.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 20:001. Definitions for 907 KAR Chapter 20.

RELATES TO: KRS 194A.005(1), 205.8451(7), (9), 304.14-640(4), 311.550(12), 314.011, 620.020(5), 20 C.F.R. 416.2101, 42 C.F.R. 400.203, 405.2401(b), 435.4, 438.2, 438.408, 447.280, 8 U.S.C. 1101(a)(15), (17), 1641(b) and (c), 38 U.S.C. 101(2), 42 U.S.C. 405(c)(2), 670 to 679c, 1395tt, 1396b(x)(3)(A), 1396d(a)(2)(A), (B), 1396d(a)(9), 1396d(p)(1), 1396d(s), 1396l, 1396n(c), 1396p(d)(4)(B), 1396r-5(g), 1396r(b), (c), and (d), 1397aa to jj[~~194A.025(3)~~]

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 20.

Section 1. Definitions. (1) "1915(c) home and community based service" means a service available or provided via a 1915(c) home and community based services waiver program.

(2) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(3) "ABD" means a person who is aged, blind, or disabled.

(4) "Adult scale" means the scale located in 907 KAR 20:020, Section 1(1), establishing Medicaid income limits by family size.

(5) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(6) "Adverse action" means:

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner; or

(e) The failure of a managed care organization to act within the timeframes provided in 42 C.F.R. 438.408(b).

(7) "After the month of separation" means the first day of the month that follows the month in which an individual ceases living in the same household of a Medicaid eligible family.

(8) "Aid to Families with Dependent Children" or "AFDC" means an assistance program:

(a) In effect from 1935 to 1996;

(b) For children whose families had low or no income; and

(c) Administered by the United States Department of Health and Human Services.

(9) "Ambulatory prenatal care" means health-related care furnished to a presumed eligible pregnant woman provided in an outpatient setting.

(10) "Appeal" means a request for review of an adverse action or a decision by an MCO related to a covered service.

(11) "Applicant" means an individual applying for Medicaid.

(12) "Authorized representative" means:

(a) For a recipient or applicant who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the applicant or recipient; or

(b) A legal guardian.

(13) "Baseline date" means the date the institutionalized individual was institutionalized and applied for Medicaid.

(14) "Basic maintenance" means the amount of income that may be retained by the applicant for living and personal expenses.

(15) "Blind work expense" or "BWE" means an SSI program option in which expenses a blind individual incurs in order to earn income are deducted for an SSI eligibility purpose.

(16) "Cabinet" is defined by KRS 194A.005(1).

(17) "Caretaker relative" means:

(a) An individual:

1. Who is the caregiver of a child; or

2. On whose tax return the child is listed as a dependent; and

(b) Who has one (1) of the following relationships to the child:

1. A grandfather;

2. A grandmother;

3. A brother;

4. A sister;

5. An uncle;

6. An aunt;

7. A nephew;

8. A niece;

9. A first cousin;

10. A relative of the half-blood;

11. A preceding generation denoted by a prefix of:

a. Grand;

b. Great; or

c. Great-great; or

12. A stepfather, stepmother, stepbrother, or stepsister.

(18) "Categorically needy" means an individual with income below 300 percent of the supplemental security income (SSI) standard who has been receiving hospice or 1915(c) home and community based services for at least thirty (30) consecutive days.

(19) "Child" means a person who:

(a)1. Is under the age of nineteen (19) years;

2.a. Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and

b. Is expected to complete the program before the age of nineteen (19) years;

3. Is not self supporting;

4. Is not a participant in any of the United States Armed Forces; and

5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;

(b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(l)(1)(D); or

(c) Is under the age of nineteen (19) years if the person is a

KCHIP recipient.

(20) "Community spouse" means the individual who is married to an institutionalized spouse who:

(a) Remains at home in the community; and

(b) Is not:

1. Living in a medical institution;

2. Living in a nursing facility; or

3. Participating in a 1915(c) home and community based services waiver program.

(21) "Community spouse maintenance standard" means the income standard to which a community spouse's otherwise available income is compared for purposes of determining the amount of the allowance used in the post-eligibility calculation.

(22) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home or both and may include thirty (30) consecutive days of receipt of a 1915(c) home and community based service or a combination of both.

(23) "Countable resources" means resources not subject to exclusion in the Medicaid Program.

(24) "DCBS" means the Department for Community Based Services.

(25) “Deemed eligible newborn” means an infant born to a mother who, at the time of the infant’s birth, was a Medicaid recipient.

(26) "Department" means the Department for Medicaid Services or its designee.

(27) "Dependent child" means a biological child, a step child, or a child gained through adoption, who:

(a) Lives with a parent in the community; and

(b) Is claimed as a dependent by either parent under the Internal Revenue Service Code.

(28) "Dependent parent" means a parent:

(a) Of either member of a couple;

(b) Who lives with the community spouse; and

(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(29) "Dependent sibling" means a brother or sister of either member of a couple, including a half-brother, half-sister, or sibling gained through adoption, who:

(a) Resides with the community spouse; and

(b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(30) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.

(31) "Excess shelter allowance" means an amount equal to the difference between the community spouse's verified shelter expenses and the minimum shelter allowance.

(32) "Fair market value" means an estimate of the value of an asset if sold at the prevailing price at the time it was actually transferred based on:

(a) The most recent gross tax assessed value of the property as stated by the local property valuation administrator; [~~or~~]

(b) An independent, licensed appraiser; or

(c) The price brought on the property at a public auction conducted by a licensed auctioneer.

(33) "Family alternatives diversion payment" means a lump sum payment made to a Kentucky Transitional Assistance Program applicant:

(a) To meet short-term emergency needs; and

(b) Pursuant to 921 KAR 2:500.

(34) "First month of SSI payment" means the first month for which an SSI-related Medicaid recipient is determined to be eligible for SSI payments.

(35) "Foster care" is defined by KRS 620.020(5).

(36) "Gross income" means non-excluded income which would be used to determine eligibility prior to income disregards.

(37) "Homestead" means property:

(a) In which an individual has an ownership interest; and

(b) Which an individual uses as the individual’s principal place of residence.

(38) "ICF IID" means intermediate care facility for individuals with an intellectual disability.

(39) "Impairment related work expense" or "IRWE" means an SSI program option in which the United States Social Security Administration deducts the cost of items or services an individual needs, due to an impairment, in order to work.

(40) "Incapacity" means a condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.

(41) "Income" means money received from:

(a) Statutory benefits (for example, Social Security, Veterans Administration pension, black lung benefits, or railroad retirement benefits);

(b) A pension plan;

(c) Rental property;

(d) An investment; or

(e) Wages for labor or services.

(42) "Individual development account" means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications which meets the criteria established in 921 KAR 2:016.

(43) "Institutionalized" means:

(a) Residing in:

1. A nursing facility;

2. An intermediate care facility for an individual with an intellectual disability; or

3. A medical institution;

(b) Receiving hospice services; or

(c) Receiving 1915(c) home and community based services.

(44) "Institutionalized individual" means an individual with respect to whom payment is based on a level of care provided in a nursing facility and who is:

(a) An inpatient in:

1. A nursing facility;

2. An intermediate care facility for individuals with an intellectual disability; or

3. A medical institution;

(b) Receiving 1915(c) home and community based services; or

(c) Receiving hospice services.

(45) "Institutionalized spouse" means an institutionalized individual who:

(a)1. Is in a medical institution, intermediate care facility for an individual with an intellectual disability, or nursing facility;

2. Participates in a 1915(c) home and community based services waiver program; or

3. Is receiving hospice services;

(b) Has a spouse who is not an institutionalized individual; and

(c) Is likely to remain institutionalized for at least thirty (30) consecutive days while the community spouse:

1. Is not receiving hospice services; and

2. Remains out of a medical institution, nursing facility, intermediate care facility for an individual with an intellectual disability, or 1915(c) home and community based services waiver program.

(46) "KCHIP" means the Kentucky Children’s Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

(47) "Kentucky Transitional Assistance Program" or "K[-]TAP" means:

(a) Kentucky's version of TANF; and

(b) A money payment program for children who are deprived of parental support or care in accordance with 921 KAR 2:006.

(48) "Keogh plan" means a full-fledged pension plan for self-employed individuals in the United States of America.

(49) "Long-term care partnership insurance" is defined by KRS 304.14-640(4).

(50) "Long-term care partnership insurance policy" means a policy meeting the requirements established in KRS 304.14-642(2).

(51) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(52) "Mandatory state supplement" is defined by 42 C.F.R. 435.4.

(53) [~~"Medicaid Works individual" means an individual who:~~

~~(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving supplemental security income;~~

~~(b) Is a least sixteen (16), but less than sixty-five (65), years of age;~~

~~(c) Is engaged in active employment verifiable with:~~

~~1. Paycheck stubs;~~

~~2. Tax returns;~~

~~3. 1099 forms; or~~

~~4. Proof of quarterly estimated tax;~~

~~(d) Meets the income standards established in 907 KAR 20:020; and~~

~~(e) Meets the resource standards established in 907 KAR 20:025.~~

~~(54)~~] "Medical institution or nursing facility" means a hospital, nursing facility, or intermediate care facility for individuals with an intellectual disability.

(54)[~~(55)~~] "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(55)[~~(56)~~] "Medically needy" is defined by 42 C.F.R. 435.4.

(56)[~~(57)~~] "Medically-needy income level" or "MNIL" means the basic maintenance standard used in the determination of Medicaid eligibility for the medically needy.

(57)[~~(58)~~] "Medicare Part A" means federal health insurance that covers:

(a) Inpatient hospital or skilled nursing facility services, including blood transfusions;

(b) Hospice services; and

(c) Home health services.

(58)[~~(59)~~] "Medicare qualified individual group 1 (QI-1)" means an eligibility category in which an individual would be a qualified Medicaid beneficiary but for the individual's income disqualifying the individual from being a qualified Medicare beneficiary due to the circumstances described in 42 U.S.C. 1396a(a)(10)(E)(iv).

(59)[~~(60)~~] "Minimum shelter allowance" means an amount that is thirty (30) percent of the standard maintenance amount.

(60)[~~(61)~~] "Minor" means the couple's minor child or the couple's minor individual older than a child who:

(a) Is under the age of twenty-one (21) years;

(b) Lives with a community spouse; and

(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(61)[~~(62)~~] "Modified adjusted gross income" or "MAGI" is defined by 42 U.S.C. 1396a(e)(14)(G).

(62)[~~(63)~~] "Month of separation" means the month in which an individual ceases living in the same household of a Medicaid eligible family.

(63)[~~(64)~~] "Monthly income allowance" means an amount:

(a) Deducted in the posteligibility calculation for maintenance needs of a community spouse or other family member; and

(b) Equal to the difference between a spouse's and other family member's income and the appropriate maintenance needs standards.

(64)[~~(65)~~] "NF" means nursing facility.

(65)[~~(66)~~] "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements established in 907 KAR 20:005, Section 2.

(66)[~~(67)~~] "Non-recurring lump sum income" means money received at one (1) time which is normally considered as income, including:

(a) Accumulated back payments from Social Security, unemployment insurance, or workers' compensation;

(b) Back pay from employment;

(c) Money received from an insurance settlement, gift, inheritance, or lottery winning;

(d) Proceeds from a bankruptcy proceeding; or

(e) Money withdrawn from an IRA by an individual prior to the individual reaching the age where no penalty is imposed for withdrawing the IRA, KEOGH plan, deferred compensation, tax deferred retirement plan, or other tax deferred asset.

(67)[~~(68)~~] "Nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted a nursing facility license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), and (d) and 42 C.F.R. 447.280 [~~and 482.66~~].

(68)[~~(69)~~] "Old Age, Survivors, and Disability Insurance" or "OASDI" means the social insurance program:

(a) More commonly known as "Social Security"; and

(b) Into which participants make payroll contributions based on earnings.

(69)[~~(70)~~] "Optional state supplement" is defined by 42 C.F.R. 435.4.

(70)[~~(71)~~] "Other family member" means a relative of either member of a couple who is a:

(a) Minor or dependent child;

(b) Dependent parent; or

(c) Dependent sibling.

(71)[~~(72)~~] "Other family member's maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of the other family member and the standard maintenance amount.

(72)[~~(73)~~] "Otherwise available income" means income to which the community spouse has access and control, including gross income that would be used to determine eligibility under Medicaid without benefit of disregards for federal, state, and local taxes; child support payments; or other court ordered obligation.

(73)[~~(74)~~] "Patient status criteria" means the patient status criteria established in 907 KAR 1:022.

(74)[~~(75)~~] "Physician" is defined by KRS 311.550(12).

(75)[~~(76)~~] "Plan to Achieve Self Support" or "PASS" means an SSI program option which enables a disabled individual receiving SSI benefits to:

(a) Identify a work goal;

(b) Identify training, items, or services needed to reach the work goal; and

(c) Set aside money for installment payments or a down payment for items needed to reach the work goal.

(76)[~~(77)~~] "Presumptive eligibility" means Medicaid eligibility determined:

(a) By a provider authorized by 907 KAR 20:050 to make a presumptive eligibility determination; and

(b) In accordance with 907 KAR 20:050.[

~~(78) "Primary care center" means an entity that meets the primary care center requirements established in 902 KAR 20:058.~~]

(77)[~~(79)~~] "Provider" is defined by KRS 205.8451(7).

(78)[~~(80)~~] "Qualified alien" means an alien who, at the time the alien applies for or receives Medicaid, meets the requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3.

(79)[~~(81)~~] "Qualified disabled and working individual" is defined by 42 U.S.C. 1396d(s).

(80)[~~(82)~~] "Qualified Medicare beneficiary" or "QMB" is defined by 42 U.S.C. 1396d(p)(1).

(81)[~~(83)~~] "Qualified non-citizen" is defined in 8 U.S.C. 1641(b) and (c).

(82)[~~(84)~~] "Qualified provider" means a provider who:

(a) Is currently enrolled with the department;

(b) Has been trained and certified by the department to grant presumptive eligibility to pregnant women; and

(c) Provides services of the type described in 42 U.S.C. 1396d(a)(2)(A) or (B) or 42 U.S.C. 1396d(a)(9).

(83)[~~(85)~~] "Qualifying income trust" or "QIT" means an irrevocable trust established for the benefit of an identified individual in accordance with 42 U.S.C. 1396p(d)(4)(B).

(84)[~~(86)~~] "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(85)[~~(87)~~] "Recipient" is defined in KRS 205.8451(9).

(86)[~~(88)~~] "Resource assessment" means the assessment, at the beginning of the first continuous period of institutionalization of the institutionalized spouse upon request by either spouse, of the joint resources of a couple if a member of the couple enters a medical institution or nursing facility, receives hospice services, or becomes a participant in a 1915(c) home and community based services waiver program.

(87)[~~(89)~~] "Resources" mean cash money and other personal property or real property that:

(a) An individual:

1. Owns; and

2. Has the right, authority, or power to convert to cash; and

(b) Is not legally restricted for support and maintenance.

(88)[~~(90)~~] "Retirement, Survivors, and Disability Insurance" or "RSDI" means an insurance benefit program:

(a) Managed by the United States Social Security Administration;

(b) Also known as Social Security Disability or Social Security Disability Insurance; and

(c) Which aims to provide monthly financial support to individuals who have lost income due to retirement, disability, or death of a family provider.

(89)[~~(91)~~] "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).

(90)[~~(92)~~] "Satisfactory documentary evidence of citizenship or nationality" is defined by 42 U.S.C. 1396b(x)(3)(A).

(91)[~~(93)~~] "Significant financial duress" means a member of a couple has established to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse to permit the community spouse to remain in the community.

(92)[~~(94)~~] "Social Security" means a social insurance program administered by the United States Social Security Administration.

(93)[~~(95)~~] "Social Security number" means a number issued by the United States Social Security Administration to United States citizens, permanent residents, or temporary working residents pursuant to 42 U.S.C. 405(c)(2).

(94)[~~(96)~~] "Special income level" means the amount which is 300 percent of the SSI standard.

(95)[~~(97)~~] "Specified low-income Medicare beneficiary" means an individual who meets the requirements established in 42 U.S.C. 1396a(a)(10)(E)(iii).

(96)[~~(98)~~] "Spend-down liability" means the amount of money in excess of the Medicaid income eligibility threshold to which incurred medical expenses are applied to result in an individual's income being below the income eligibility threshold.

(97)[~~(99)~~] "Spousal protected resource amount" means resources deducted from a couple's combined resources for the community spouse in an eligibility determination for the institutionalized spouse.

(98)[~~(100)~~] "Spousal share" means one-half (1/2) of the amount of a couple's combined countable resources, up to a maximum of $60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g).

(99)[~~(101)~~] "Spouse" means a person legally married to another under state law.

(100)[~~(102)~~] "SSI benefit" is defined by 20 C.F.R. 416.2101.

(101)[~~(103)~~] "SSI essential person, spouse, or nonspouse" means an individual necessary to an SSI recipient to enable the SSI recipient to be self-supporting.

(102)[~~(104)~~] "SSI general exclusion" means the twenty (20) dollars disregard from income allowed by the Social Security Administration in an SSI determination.

(103)[~~(105)~~] "SSI program" means the United States supplemental security income program.

(104)[~~(106)~~] "SSI standard" means the amount designated by the Social Security Administration as the federal benefit rate.

(105)[~~(107)~~] "Standard maintenance amount" means one-twelfth (1/12) of the federal poverty income guideline for a family unit of two (2) members, with revisions of the official income poverty guidelines applied for Medicaid provided during and after the second calendar quarter that begins after the date of publication of the revisions, multiplied by 150 percent.

(106)[~~(108)~~] "State plan" is defined by 42 C.F.R. 400.203.

(107)[~~(109)~~] "State spousal resource standard" means the amount of a couple's combined countable resources determined necessary by the department for a community spouse to maintain himself or herself in the community.

(108)[~~(110)~~] "Support right" means the right of an institutionalized spouse to receive support from a community spouse under state law.

(109)[~~(111)~~] "Targeted low-income child" is defined by 42 C.F.R. 457.310(a).

(110)[~~(112)~~] "Temporary Assistance for Needy Families" or "TANF" means a block grant program which:

(a) Succeeded AFDC; and

(b) Is designed to:

1. Assist needy families so that children can be cared for in their own homes;

2. Reduce the dependency of needy parents by promoting job preparation, work, and marriage;

3. Prevent out-of-wedlock pregnancies; and

4. Encourage the formation and maintenance of two-parent families.

(111)[~~(113)~~] "Title IV-E benefits" means benefits received via Social Security Act Title IV, Part 3, which is codified as 42 U.S.C. 670 to 679c.

(112)[~~(114)~~] "Tobacco Master Settlement Agreement" means an agreement entered into in November 1998 between certain tobacco companies and states' attorneys general of forty-six (46) states:

(a) Which settled states' lawsuits against the tobacco industry for recovery of tobacco-related health care costs;

(b) Which exempted the tobacco companies from private tort liability regarding harm caused by tobacco; and

(c) In which the tobacco companies agreed to make various annual payments to the states to compensate for some of the medical costs incurred in caring for individuals with smoking-related illnesses.

(113)[~~(115)~~] "Transferred resource factor" means an amount that is:

(a) Equal to the average:

1. Monthly cost of nursing facility services in the state at the time of application; and

2. Of private pay rates for semi private rooms of all Medicaid participating facilities; and

(b) Adjusted annually.

(114)[~~(116)~~] "Trust" means a legal instrument or agreement valid under Kentucky state law in which:

(a) A grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee or trustees for the benefit of the grantor or certain designated individuals or beneficiaries; and

(b) A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries.

(115)[~~(117)~~] "Trusted source" means a source recognized by the federal government or department as a reliable source for verifying an individual's information.

(116)[~~(118)~~] "Uncompensated value" means the difference between the:

(a) Fair market value at the time of transfer, less any outstanding loans, mortgages, or other encumbrances on the asset; and

(b) Amount received for the asset.

(117)[~~(119)~~] "Undue hardship" means that:

(a) Medicaid eligibility of an institutionalized spouse cannot be established on the basis of assigned support rights; and

(b) The spouse is subject to discharge from the medical institution, nursing facility, or 1915(c) home and community based services waiver program due to inability to pay.

(118)[~~(120)~~] "Valid immigrant status" is defined in:

(a) 8 U.S.C. 1101(a)(15); or

(b) 8 U.S.C. 1101(a)(17).

(119)[~~(121)~~] "Veteran" is defined in 38 U.S.C. 101(2).

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: November 12, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 24, 2022, 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 January 14, 2022, 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 January 31, 2022. 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: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in Chapter 20 of Title 907 of the Kentucky Administrative Regulations. Chapter 20 contains Medicaid eligibility and eligibility-related administrative regulations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in Chapter 20 of Title 907 of the Kentucky Administrative Regulations. Chapter 20 contains Medicaid eligibility and eligibility-related administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the definitions for administrative regulations located in Chapter 20 of Title 907 of the Kentucky Administrative Regulations. Chapter 20 contains Medicaid eligibility and eligibility-related administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the definitions for administrative regulations located in Chapter 20 of Title 907 of the Kentucky Administrative Regulations. Chapter 20 contains Medicaid eligibility and eligibility-related administrative regulations.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this regulation amend the definition of “fair market value” to include the price that is brought at a public auction conducted by a licensed auctioneer. In addition, “Medicaid Works individual” is removed to reflect the ending of that program, and “primary care center” is removed to reflect the removal of licensure for that facility type.

(b) The necessity of the amendment to this administrative regulation: The amendment to this regulation is necessary to expand the definition of “fair market value” to include the price brought at a public auction conducted by a licensed auctioneer, to reflect the ending of the Medicaid Works program, and to reflect a statutory change to eligible facility licensure types.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by providing additional clarification of what constitutes fair market value, reflecting the ending of the Medicaid Works program, and a statutory modification to eligible facility licensure types.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by reflecting current state law as it relates to fair market value, facility licensure, and the Medicaid Works program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients and individuals applying for Medicaid are affected by the administrative regulation. Currently, over 1.5 million individuals in Kentucky receive Medicaid. Since the creation of the Medicaid Works program in 2007, only 15 different people have ever used it. Currently, there are only 5 beneficiaries using the program, and DMS intends to otherwise accommodate this population within the existing healthcare system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will benefit due to the clarity of Medicaid eligibility terms being defined in this administrative regulation.

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

(a) Initially: No cost is necessary to initially implement this administrative regulation.

(b) On a continuing basis: No continuing cost is necessary to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds comprised of general fund and restricted fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding are necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? Tiering is neither applied nor necessary as the administrative regulation establishes definitions for Medicaid eligibility administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services and Department for Community Based Services will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C.

1396a

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

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

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

(c) How much will it cost to administer this program for the first year? No cost is necessary to implement this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? No cost is necessary in subsequent years to implement this administrative regulation.

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

Revenues (+/-): .

Expenditures (+/-):

Other explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 20:020. Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals.

RELATES TO: KRS 205.520, 42 C.F.R. Part 130, Section 4735 of Pub.L. 105-33, [~~38 U.S.C. 5503,~~] 42 U.S.C. 1382a, 1383c(b), 1396-1396v, 1396p(d)(4), 1397jj(b)[~~1396jj(b), 1397aa, 9902(2)~~]

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435, 42 U.S.C. 1396a, 1396b, 1396d, 1397aa, 1382a(b)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program in accordance with 42 U.S.C. 1396 through 1396v. 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 for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the income standards by which Medicaid eligibility is determined, except for individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or former foster care individuals who aged out of foster care while receiving Medicaid coverage.

Section 1. Income Limitations. (1)(a) Income shall be determined by comparing adjusted income as required by Section 2 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse, and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,820[~~2,600~~]	$235[~~217~~]
2	3,492[~~3,200~~]	291[~~267~~]
3	4,056[~~3,700~~]	338[~~308~~]
4	5,028[~~4,600~~]	419[~~383~~]
5	5,904[~~5,400~~]	492[~~450~~]
6	6,672[~~6,100~~]	556[~~508~~]
7	7,452[~~6,800~~]	621[~~567~~]

(b) For each additional family member, $720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) For a pregnant woman or child eligible pursuant to 42 U.S.C. 1396a(e) a change of income that occurs after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) The special income limits and provisions established in this subsection shall apply for a determination of eligibility of a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1).

(a) A qualified Medicare beneficiary shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) A specified low-income Medicare beneficiary shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) A Medicare qualified individual group 1 (QI-1) shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

(d) A qualified disabled and working individual shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) Income shall be limited to the allowable amounts for the SSI program for:

(a) A child who lost eligibility for SSI benefits due to the change in the definition of childhood disability as established in 42 U.S.C. 1396a(a)(10); or

(b) A person with hemophilia who received a class action settlement as established in 42 C.F.R. Part 130.

(5) Income shall be limited to the allowable amounts for the mandatory or optional state supplement program for an individual described in 42 C.F.R. 435.135.[

~~(6) The following special income factors shall apply for a Medicaid Works individual:~~

~~(a) Income for a Medicaid Works individual's spouse shall not exceed $45,000 per year;~~

~~(b) A Medicaid Works individual's unearned income shall be less than the SSI standard plus twenty (20) dollars monthly; and~~

~~(c) The combination of earned and unearned income for a Medicaid Works individual shall be less than 250 percent of the official poverty income guidelines.~~]

Section 2. Income Disregards. In comparing income with the scale established in Section 1 of this administrative regulation, gross income shall be adjusted as established in this section.

(1) In a TANF or family related Medicaid case:

(a) The standard work expense of an adult member or out-of-school child shall be deducted from gross earnings;

(b) For a person with either full-time or part-time employment, the standard work expense deduction shall be ninety (90) dollars per month; and

(c) Earnings of an individual attending school who is a child or parent under age nineteen (19) or a child under age eighteen (18) who is a high school graduate shall be disregarded.

(2) For an ABD Medicaid case [~~or a Medicaid Works individual~~], the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b) shall apply.

(3) For an individual in a Medicaid eligibility group subject to 42 U.S.C. 1396a(a)(10)(E)(i), (ii), or (iv) or 42 U.S.C. 1396d(p), if an annual Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment causes an individual to be ineligible for Medicaid benefits:

(a) The individual's most recent Social Security cost-of-living adjustment, Railroad Retirement cost-of-living adjustment, or federal poverty level cost-of-living adjustment shall be disregarded; and

(b) The disregard referenced in paragraph (a) of this subsection shall continue until the individual loses Medicaid

eligibility for any other reason for three (3) consecutive months.

(4) [~~(a)~~] An ABD Medicaid case shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).[

~~(b) A Medicaid Works individual shall be the applicable federal SSI disregards pursuant to 42 U.S.C. 1382a(b).~~]

Section 3. Lump Sum Income. Except as established in Section 8 of this administrative regulation, for a Medicaid case, lump sum income shall be considered as income in the month received.

Section 4. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill a plan approved by the United States Social Security Administration to achieve self support, IRWE deduction, or BWE deduction shall be excluded from consideration.

(2) A payment or benefit from a federal statute, other than SSI benefits, shall be excluded from consideration as income if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) A cash payment intended specifically to enable an applicant or recipient to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) A Federal Republic of Germany reparation payment shall not be considered available in the eligibility or post eligibility treatment of income of an individual in a nursing facility or hospital or who is receiving home and community based services under a waiver program.

(5) A Social Security cost of living adjustment on January 1 of each year shall not be considered as available income for a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified disabled and working individual, or Medicare qualified individual group 1 (QI-1) until after the month following the month in which the official poverty income guidelines promulgated by the United States Department of Health and Human Services are published.

(6) Any amount received from a victim's compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) A veteran or the spouse of a veteran residing in a nursing facility who is receiving a Veterans Administration (VA) pension benefit shall have ninety (90) dollars:

(a) Excluded as income in the Medicaid eligibility determination; and

(b) Excluded as income in the post eligibility determination process.

(8) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in a Medicaid eligibility determination for a veteran or the spouse of a veteran residing in a nursing facility.

(a) Veterans Administration payments for unmet medical expenses and aid and attendance shall be excluded in the post eligibility determination for a veteran or the spouse of a veteran residing in a nonstate-operated nursing facility.

(b) Veterans Administration payments for unmet medical expenses and aid and attendance shall not be excluded in the post eligibility determination process for a veteran or the spouse of a veteran residing in a state-operated nursing facility.

(9) An Austrian Social Insurance payment based, in whole or in part, on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(10) An individual retirement account, KEOGH plan, or other tax deferred asset shall be excluded as income until withdrawn.

(11) Disaster relief assistance shall be excluded as income.

(12) Income which is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC or SSI) shall be excluded.

(13) In accordance with 42 C.F.R. 435.122 and Section 4735 of Pub.L. 105-33, a payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.

(14) In accordance with 42 C.F.R. Part 130, any payment received by a person with hemophilia from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.

(15) Family alternatives diversion payments shall be excluded as income.

(16) All monies received by an individual from the Tobacco Master Settlement Agreement shall be excluded.

(17) Income placed in a qualifying income trust established in accordance with 42 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5), shall be excluded.

Section 5. Consideration of Mandatory or Optional State Supplements. For an individual receiving a mandatory or optional state supplement, that portion of the individual's income which is in excess of the basic maintenance standard, established in Section 1(1) of this administrative regulation, shall be applied to the special need which results in the supplement.

Section 6. Pass-through Cases. (1)(a) An increase in a Social Security payment shall be disregarded in determining eligibility for Medicaid benefits if:

1. The increase is a cost of living increase; and

2. The individual would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement.

(b) An individual who would otherwise be eligible for an SSI benefit, mandatory state supplement, or optional state supplement shall remain eligible for the full scope of program benefits with no spend-down requirements, as established in Section 7 of this administrative regulation.

(2) For an individual who applied by July 1, 1988, the additional amount specified in 42 U.S.C. 1383c(b) shall be disregarded, meaning that amount of Social Security benefits to which a specified widow or widower was entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) an individual would be eligible for federal SSI benefits.

Section 7. Spend-down Provisions. (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2)(a) An individual with income in excess of the basic maintenance scale established in Section 1(1) of this administrative regulation shall qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(b) Medical expenses incurred in a period prior to the quarter for which spend-down eligibility is being determined shall be used to offset excess income if the medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses.

Section 8. Individual Retirement Account. (1)(a) If an individual reaches the point where the individual is eligible to begin withdrawing from an IRA without suffering a penalty, the individual shall begin withdrawing from the IRA at least the minimum amount determined by the financial institution holding the IRA.

(b) If an individual does not begin withdrawing from an IRA pursuant to paragraph (a) of this subsection, the individual shall be ineligible for Medicaid benefits.

(2) If an individual withdraws funds from an IRA prior to reaching the point where the individual would suffer no penalty for withdrawing funds, the withdrawal shall be considered non-recurring lump sum income.

(3) If an individual withdraws income pursuant to subsection (1)(a) of this section, the income shall be prorated over the period of time the income covers (for example monthly, quarterly, or annually).

Section 9. Applicability. The provisions and requirements of this administrative regulation shall:

(1) Apply to:

(a) A child in foster care;

(b) An aged, blind, or disabled individual; and

(c) An individual who receives supplemental security income benefits; and

(2) Not apply to an individual whose Medicaid eligibility is determined:

(a) Using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or

(b) Pursuant to 907 KAR 20:075.

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: November 12, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 24, 2022, 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 January 14, 2022, 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 January 31, 2022. 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: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid eligibility income standards except for Medicaid eligibility categories for which the modified adjusted gross income standard is the income standard.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid eligibility income standards.

(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 provisions related to Medicaid eligibility income 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 provisions related to Medicaid eligibility income standards.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation removes references to the Medicaid Works program to reflect the ending of that program. Medicaid Works recipients are being transferred into the expansion Medicaid population. The amendment also updates the income eligibility chart to reflect the current values used by DMS for non-MAGI individuals.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to reflect the ending of the Medicaid Works program.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by removing a reference to a discontinued program.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by removing a reference to a discontinued program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Since the creation of the Medicaid Works program in 2007, only 15 different people have ever used it. Currently, there are only 5 beneficiaries using the program, and DMS intends to otherwise accommodate this population within the existing healthcare system.

(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. Recipients will be otherwise accommodated when applying for Medicaid services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). DMS does not anticipate any expenses for this population in transferring.

(c) As a result of compliance, what benefits will accrue to the entities identified in question. DMS anticipates that current beneficiaries will remain in the Medicaid Program.

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

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of 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 will be necessary to implement the amendments.

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

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14), 42 U.S.C. 1396a(r)(2), 42 U.S.C. 1396a(gg), and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).

2. State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

KRS 194A.050(1) authorizes the Cabinet for Health and Family Services secretary to

"formulate, promote, establish, and execute policies, plans, and programs and shall adopt, administer, and enforce throughout the Commonwealth all applicable state laws and all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and

sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

3. Minimum or uniform standards contained in the federal mandate. Effective January 1, 2014, each state's Medicaid program is required – except for certain designated populations - to determine Medicaid eligibility by using the modified adjusted gross income and is prohibited from using any type of expense, income disregard, or any asset or resource test. The populations exempted from the new requirements (and to whom the old requirements continue to apply) include aged individuals [individuals over sixty-five (65) years of age or who receive Social Security Disability Insurance]; individuals eligible for Medicaid as a result of being a child in foster care; individuals who are blind or disabled; individuals who are eligible for Medicaid via another program; individuals enrolled in a Medicare savings program; and medically needy individuals.

Also, states are prohibited from continuing to use income disregards, asset tests, or resource tests for individuals who are eligible via the modified adjusted gross income standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 U.S.C. 1315.

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

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

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in the implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in the continuing operation 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 Aging and Independent Living
Division of Aging and Physical Disabilities
(Amendment)

910 KAR 1:190. Nutrition program for older persons.

RELATES TO: KRS Chapter 45A, 194A.060(2), 205.201, 205.203, 205.455(4), [~~205.460~~], 205.465, 209A.030, 310.005, 310.021, 310.031, 29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 3030a to 3030g-22

STATUTORY AUTHORITY: KRS 194A.050(1), 205.204(1), (2), 42 U.S.C. 3030e

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3030e authorizes grants to states under state plans, approved under 42 U.S.C. 3027, to establish and operate a nutrition program for older persons. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations as necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds. KRS 205.204(1) and (2) designates the cabinet as the state agency to administer the Older Americans Act, 42 U.S.C. 3001 to 3058ff, in Kentucky and authorizes the cabinet to promulgate administrative regulations necessary to comply with any requirement imposed or required by federal law. This administrative regulation establishes the standards of operation for the nutrition program for older persons.

Section 1. Definitions. (1) "Area Agencies on Aging and Independent Living" or "AAAIL" means an entity designated by the state to administer, at the local level, the programs funded by the department.

(2) "Area plan" means the plan that:

(a) Is submitted by a district for the approval of the department; and

(b) Releases funds under contract for the delivery of services within the planning and service area.

(3) "Central kitchen" means an institutional kitchen which is equipped and used for preparing food to be sent to meal sites for service.

(4) "Certified nutritionist" is defined by KRS 310.005 and KRS 310.031.

(5) "Community" means a county designated as urban or rural in accordance with the most current percentage of population listing from the U.S. Census Bureau.

(6) "Congregate meal" means a meal provided to a qualified individual in a congregate or group setting.

(7) "Congregate nutrition services" means the provision of meals and related nutrition services in a group setting to older individuals that include:

(a) Nutrition education;

(b) Nutrition assessment;

(c) Nutrition counseling;

(d) Nutrition screening;

(e) Malnutrition screening;

(f)[~~(e)~~]Opportunities for social engagement at senior centers or on field trips; and

(g)[~~(f)~~] Volunteer roles that contribute to overall health and well-being.

(8) "Congregate setting" means a senior center or a restaurant.

(9) "Cycle menu" means a menu planned for at least five (5) weeks and repeated with modification for seasonal menu items.

(10) "Department" means the Department for Aging and Independent Living.

(11) "Dietary reference intakes" means the nutritional requirements[~~:~~

~~(a)~~] established by the Food and Nutrition Board of the Institute of Medicine of the National Academies; [~~and~~

~~(b) Included in DAIL-NP-17.9.8, Meal Planning Nutrient Requirements.~~]

(12) "District" is defined by KRS 205.455(4).

(13) "District nutrition program" means the program approved by the department and administered in each of the fifteen (15)

planning and service areas in Kentucky by the districts or other contract agencies.

(14) "Home delivered meal" means a meal provided to a qualified individual in his or her place of residence.

(15) "Home delivered nutrition services" means the provision of meals and related nutrition services to older individuals who are homebound, such as:

(a) Nutrition screening;

(b) Malnutrition screening;

(c)[~~(b)~~] Nutrition education;

(d)[~~(c)~~] Nutrition assessment; and

(e)[~~(d)~~] Nutrition counseling.

(16) "Licensed dietitian" is defined by KRS 310.005(11).

(17) "Meal" means a portion of food that:

(a) Provides the equivalent of one-third (1/3) of the dietary reference intakes;

(b) Meets the requirements of the Dietary Guidelines for Americans; and

(c) Is served with optional condiments to complete the meal as approved by the licensed dietitian or certified nutritionist.

(18) "Modified atmosphere packaging" means the method of extending the shelf life of fresh food products where the atmospheric air inside a package is replaced with a protective gas mix that helps ensure the product stays fresh for as long as possible.

(19) "Modified Meal" means a meal that has an altered texture such as pureed, chopped, or thickened liquids to accommodate the needs of an individual with difficulty in chewing or swallowing.

(20)[~~(19)~~] "Nontraditional meal" means a meal approved by the department that is cold, frozen, dried, canned, or modified atmosphere packaging.

(21)[~~(20)~~] "Nutrition counseling" means individualized guidance:

(a) To an individual who is at nutritional risk because of the individual's health or nutritional history, dietary intake, chronic illness, or medications use, or to caregivers; and

(b) Provided one-on-one by a licensed dietitian to address options and methods for improving the individual's nutrition status.

(22)[~~(21)~~] "Nutrition screening" means the identification of those at risk of poor nutrition in accordance with Section 9 of this administrative regulation.

(23)[~~(22)~~] "Nutrition service provider" means an entity that is awarded a contract under the area plan to provide nutrition services covered under this administrative regulation.

(24)[~~(23)~~] "Nutrition Services Incentive Program" or "NSIP" means federally provided incentives to encourage and reward effective performance by states in the efficient delivery of nutrition meals to older individuals.

(25)[~~(24)~~] "OAA" means the Older Americans Act of 1965, as amended, with the relevant portions of the federal law for purposes of this program codified as 42 U.S.C. 3030a to 3030g-22.

(26)[~~(25)~~] "Rural" means a community with less than 50,000 population living in a rural area as designated by the most current listing from the U.S. Census Bureau.

(27)[~~(26)~~] "Standardized recipe" means a written formula for producing food items of a consistent quality and quantity that specifies the yield and portion size adjusted for the requirements of the nutrition program for older persons.

(28)[~~(27)~~] "State nutrition program for older persons" means the nutrition program administered by the department, consisting of:

(a) Meals;

(b) Nutrition screening and education; and

(c) Nutrition assessment and counseling.

(29)[~~(28)~~] "Target group" means:

(a) Low-income individuals, including low-income minority older individuals;

(b) Older individuals with limited English proficiency;

(c) Older individuals residing in rural areas; or

(d) Older individuals at risk for institutional placement.

(30)[~~(29)~~] "Traditional meal" means a ready to eat hot meal.

(31)[~~(30)~~] "Urban" means a community with 50,000 or more population living in an urbanized area as designated by the most current listing from the U.S. Census Bureau.

Section 2. Eligibility. (1) Except as provided in subsection (2) of this section, an individual shall be eligible for congregate meals and congregate nutrition services if the individual:

(a) Is aged sixty (60) or older;

(b) Is the spouse of an individual aged sixty (60) or older; or

(c) Has a disability and resides at home with the eligible older individual.

(2) The AAAIL may, in accordance with 42 U.S.C. 3030g-21(2)(H), (I), provide a congregate meal to:

(a) A volunteer providing services during meal hours; or

(b) An individual under age sixty (60) who:

1. Has a disability; and

2. Resides in a housing facility primarily occupied by older individuals at which congregate nutrition services are provided.

(3) An individual shall be eligible for home-delivered meals and home-delivered nutrition services if the individual:

(a)1. Is a person aged sixty (60) or over, or the spouse of a person aged sixty (60) or over;

2. Is unable to attend a congregate site because of illness or an incapacitating disability; and

3. Does not have a person in the home able to prepare a nutritious meal on a regular basis; or

(b)1. Is under age sixty (60);

2. Has a disability; and

3. Resides with a homebound individual aged sixty (60) or over.

(4) Eligibility for the Homecare Program home-delivered meals shall be in accordance with 910 KAR 1:180.

Section 3. District Nutrition Funding. The district nutrition program may include meals or nutrition services from the following funding sources:

(1) Congregate or home delivered meals funded by the OAA;

(2) Home delivered meals as specified in 910 KAR 1:180 funded by the State Homecare Program;

(3) A congregate meal as specified in 910 KAR 1:160 funded by the State Adult Day and Alzheimer's Respite Program;

(4) NSIP funding for expansion of meals served in the state; or

(5) Other funds designated in the AAAIL's approved area plan, such as United Way or other local funding.

Section 4. Congregate Nutrition Services. (1)(a) Congregate meals shall be provided by a nutrition service provider who, five (5) or more days per week, in each rural or urban community within the nutrition service provider's service and planning area, provides at least one (1) hot or nontraditional meal per day and any additional meals which the nutrition service provider may elect to provide in a congregate setting.

(b) A waiver may be approved by the department for a rural area to serve less frequently if the budget does not sustain five (5) days per week, pursuant to 42 U.S.C. 3030e.

(2) The requirements established in this subsection shall apply to the transportation of meals to a congregate site.

(a) 1. Bulk foods shall be transported in a stainless steel pan or aluminum disposable pan in an insulated container.

2. Use of plastic shall be restricted to cold foods only.

(b)1. Hot items shall be transported in a bulk container separated from cold products.

2. A container shall be preheated or prechilled before being loaded.

(3) The order of service shall be as established in this subsection.

(a) Congregate meals shall be served after packaging the home delivered meals.

(b) Nutritional site personnel shall check and record temperatures of congregate meals daily.

(c) Milk or other cold food items shall not be preset on a table prior to meal service.

(d) A table shall not be preset with eating or drinking utensils more than four (4) hours prior to meal service unless each item is individually wrapped.

(e) A preset table shall not be used for activities prior to meal

service.

(f) After all participants have been served, volunteers or other staff may be served.

(4) If more meals were prepared than arrived guests at meal time, after guests have been served, left over full meals may be packaged for frozen meals to be used for emergency or weekend meals.

(5)[~~(g)~~] Food items left over after packaging for emergency or weekend meals [~~at the point of service~~] shall be:

(a)[~~1.~~]Offered as seconds to a participant, if requested by the participant and after all have been served;

(b)[~~2.~~] Donated to a local facility, such as a food bank or homeless shelter if overproduced; or

(c)[~~3.~~] Discarded.

(6)[~~(4)~~](a) Only complete meals shall be claimed for payment.

(b) Omission of required meal components shall cause that meal to be incomplete and ineligible for payment and for USDA reimbursement.

(c) Refusal by a participant of specific meal components shall not render that meal incomplete.

(7)[~~(5)~~](a) A participant shall be allowed to carry out left over foods.

(b) Center staff shall assure that a participant is advised concerning the risks involved if foods are held at unsafe temperatures.

(c) Staff or volunteers shall not devote time or supplies to the task of packaging individual menu items as carry-outs for participants or staff.

(8)[~~(6)~~]A participant shall have an opportunity to complete a satisfaction survey to evaluate meals and service at least annually.

(9)[~~(7)~~](a) An ongoing participant nutrition education program shall be implemented by the nutrition service provider or AAAIL and include at a minimum one (1) session per month at each nutrition site.

(b) The education program shall include a variety of teaching methods on the following topics:

1. Nutrition and its relevance to health promotion and disease prevention;

2. Consumer approaches to food safety and food purchasing;

3. Food fads and diets;

4. Physical activity; and

5. Activities to modify behavior and improve health literacy, including providing information and optimal nutrients.

(c) An annual nutrition education plan shall be developed by the AAAIL and the nutrition service providers.

(d) The plan shall include a minimum of one session each month at each nutrition site.

(e) The plan shall include a variety of topics using a wide range of teaching techniques.

(f) The plan shall include how educational materials shall be provided to home delivered meals clients at least monthly.

(g)The plan and educational materials shall be provided in the participants preferred language.

(h) The DAIL Senior Health and Wellness Newsletter may be utilized to meet the nutrition education requirements monthly.

Section 5. Home Delivered Nutrition Services. (1) Home delivered meals shall be provided by a nutrition service provider who, five (5) or more days a week, in each rural or urban community within the nutrition service provider's service and planning area, provides at least one (1) home delivered hot or nontraditional meal per day and any additional meals which the nutrition service provider may elect to provide.

(2)(a) Except as provided in paragraph (b) of this subsection, a meal shall be delivered only to an eligible person in the eligible person's home. The delivery driver shall leave the meal only if:

1. The delivery driver sees or hears the participant;

2. The delivery driver takes the meal to the door of a person residing in a multi family residence; or

3. The participant living in a single family home acknowledges the delivery through electronic means such as a video doorbell, or intercom.

(b) A meal may be left with a designee of the older person if the designee has been informed of the requirements of the nutrition program and provides assurance they have the ability [~~has indicated a willingness~~] to comply with the following [~~those~~] requirements:[~~.~~]

1. Store cold foods in a manner that maintains cold food below forty-one (41) degrees Fahrenheit; and

2. Store hot foods in a manner that maintains the temperature above 135 degrees Fahrenheit; or

3. Store hot foods below forty-one (41) degrees Fahrenheit.

(c) For a traditional meal, an AAAIL shall train and monitor delivery staff to ensure that the meal participant or designee acknowledges delivery of the meal.

(3) Documentation for the provision of a non-traditional meal shall show:

(a) The participant has expressed a preference for the non-traditional meal or lives off an established route;

(b) Proper storage and heating facilities are available in the home;

(c) The participant is able to prepare and consume the meal alone or with available assistance; and

(d) Cost is no more than a traditional meal.

(4)(a) A provider of home delivered meals shall use methods of delivery that shall be delivered in a sanitary manner to prevent outside contamination and hold food at appropriate temperatures as specified in paragraph (b) of this subsection.

(b) Meals shall be delivered in accordance with the requirements established in this paragraph.

1. Delivery routes shall be established by the nutrition service provider to minimize nutrient loss and to facilitate temperature retention.

2. Meals shall be delivered within four (4) hours from the end of preparation to the final destination.

3. Hot food shall be maintained at or above 135 degrees Fahrenheit.

4. Cold food shall be maintained at or below forty-one (41) degrees
Fahrenheit, and ice may be used if the food containers are constructed to prevent water seepage into the food.

5.a. Nutrition site personnel shall check and record temperatures of meals at least weekly toward the end of each meal delivery route.

b. If the temperatures are not consistent with the requirements of subparagraphs 3. and 4. of this paragraph, the nutrition site personnel shall check and record the meal temperatures daily until the temperatures are consistent with those requirements.

6. Neutral temperature foods shall be packaged and delivered in a way as to prevent outside contamination.

7.a. Frozen meals shall be maintained in a frozen state during delivery.

b. If the meal has thawed to the extent that ice crystals are not contained in the meal or the temperature is above forty (40) degrees Fahrenheit, the meal shall not be refrozen for later use. The meal shall be either:

(i) Heated and consumed immediately; or

(ii) Discarded.

(5) A participant shall have an opportunity to:

(a) Complete a satisfaction survey developed by the nutrition service provider to evaluate meals and services at least annually; and

(b) Provide ongoing comments for preparation of menus.

(6)(a) An ongoing participant nutrition education program shall be implemented by the nutrition service provider and shall include a minimum of one (1) session each month for the home delivered meal participant.

(b) The program shall include nutrition training as specified in Section 4(9)(b)[~~4(8)(b)~~] of this administrative regulation.

(7) A nutrition service provider shall have a contingency plan in place to replace a meal if the meal:

(a) Does not register the correct temperature on delivery; or

(b) Is not delivered.

Section 6. Emergency Meals. (1) Provisions shall be made for furnishing emergency meals during inclement weather conditions,

power failure, or any disaster that may cause isolation or create a special need.

(2) An emergency meal shall:

(a) Be shelf stable, frozen, freeze-dried, dehydrated, modified atmosphere packaging, or a combination of these types of meals;

(b) Meet the nutritional requirements of this program;

(c) Follow a menu that has been:

1. Approved by a certified nutritionist or licensed dietitian;

2. Planned for a minimum of three (3) days; and

3. Delivered, reported and billed in the same month; and

(d) Use frozen meals only if the:

1. Participant is able to store, prepare, and consume the meal alone or with available assistance; and

2. Delivery system is arranged so that storage time after delivery is minimal.

(3) Water shall be provided, if necessary, to prepare a meal.

(4) The menu plan shall include some foods which require no cooking prior to consumption.

(5) One (1) dish meals may be used if the nutritional requirements of the Dietary Guidelines of Americans are met.

(6)(a) Foods may be taken to the nutrition site.

(b) A participant may assist with packaging foods for distribution if the participant is a volunteer at the nutrition site.

(7) An emergency meal package shall be distributed to the eligible homebound client receiving home delivered meals.

(8) Emergency meals may be used for a congregate participant if the center is closed.

Section 7. Nutrition Services Incentive Program (NSIP). (1) Additional funding received from the NSIP for the nutrition program shall be used exclusively to purchase food and shall not be used to pay for another nutrition-related service or for state or agency administrative costs.

(2) The department shall disburse NSIP monies to AAAILs based upon the AAAIL's proportion of the total number of eligible meals served in the state.

(3) The AAAIL shall:

(a) Expend NSIP monies within the fiscal year funds are allocated by the department;

(b) Use the NSIP funds to expand the total number of meals provided in the state;

(c) Not use the NSIP funds to reduce funds from any other grant or contract which the provider may be given;

(d) Maintain records to show the amount of cash received and how it was expended;

(e) Only use the NSIP funds to purchase:

1. Foods approved by the United States Department of Health and Human Services or other foods produced in the United States of America; or

2. Meals if the cost of the meal is quoted as a unit of service cost which includes both food and labor. Ready to serve meals may be purchased on a unit of service cost basis if each meal contains food equivalent in value to the current rate of reimbursement; and

(f) Serve meals through a nutrition service provider under the jurisdiction, control, management, and audit authority of the department and AAAIL and to eligible individuals as described in Section 2 of this administrative regulation.

(4) Financial records kept by the nutrition service provider shall show:

(a) Meals provided are bid without regard to NSIP reimbursement;

(b) NSIP funds are used as a revenue source for expansion of meals served in the state;

(c) The unit of service cost of a meal is not reduced in anticipation of future NSIP reimbursement but is stated as a true cost in both bidding and reporting procedures; and

(d) Monthly financial reports reflect NSIP expenditures.

(5) NSIP funding shall not be used for the following situations:

(a) Meals served to individuals, guests, or staff less than sixty (60) years of age;

(b) Meals served to a person who is paying a set fee for the meal;

(c) Meals that are served to consumers that meet income eligibility criteria under other programs;

(d) Meals used as a non-federal match for other federal program funding;

(e) Alcoholic beverages and vitamin supplements;

(f) Sponsored meals if a set fee or charge is involved; or

(g) Meals served to individuals in nursing homes, adult day care, or assisted living facilities if the meal is a part of the per diem.

Section 8. Nutrition Program Costs. (1) Ready-to-serve meal costs shall include the following:

(a) The cost of raw food, including food purchased with NSIP cash resources;

(b) The costs of serving supplies, disposables, cleaning materials, and noncapital items used in the preparation of food;

(c) The costs of labor for food preparation, cooking, portioning of foods, and delivery of food to the site of service. Labor costs shall include:

1. Fringe benefits;

2. Wages for persons who prepare and maintain the sanitary condition of the kitchen and storage areas; and

3. Wages paid for time spent in food and supplies inventorying, storing and receiving, and in direct supervision of employees;

(d) Equipment costs for capital items such as a:

1. Range;

2. Dishwasher;

3. Truck or van;

4. Steam table; or

5. Freezer;

(e) The costs of space, related utility costs, equipment operation, maintenance and repair costs; and

(f) The nonlabor costs of transporting food, food storage, insurance, and general liability.

(2) Food service and delivery costs shall include:

(a) The total labor costs for serving foods and for home delivery of meals to a participant;

(b) Mileage and maintenance of vehicle costs for home delivery of meals;

(c) Costs incurred for nutrition education and nutrition outreach services; and

(d) Project management costs, including personnel, equipment, and supply costs.

(3)(a) A food service contract bid shall be structured in accordance with Kentucky's Procurement Code, KRS Chapter 45A.

(b) Meals shall:

1. Be bid without regard to funding source; and

2. Contain both a meal preparation cost and a delivery cost.

Section 9. Responsibilities of AAAIL. (1) An AAAIL shall have written policies and procedures to carry out the AAAIL's responsibilities as established in this subsection. The AAAIL shall:

(a) Solicit the expertise of a dietitian or other individual with equivalent education and training in nutrition science or an individual with comparable expertise in the planning of nutritional services pursuant to 42 U.S.C. 3030g-21(1);

(b) Pursuant to 42 U.S.C. 3030g-21(2)(K), encourage individuals who distribute nutrition services to provide homebound older individuals with medical information approved by health care professionals, such as informational brochures on how to get vaccines in the individual's community for:

1. Influenza;

2. Pneumonia; and

3. Shingles;

(c) Provide implementation and management of the state nutrition program for older persons;

(d) Assure that a nutrition service provider provides:

1. At least one (1) meal per day in a congregate nutrition site or provide home delivered meals based upon a determination of a participant's needs;

2. Meals to reach the maximum number of eligible older individuals consistent with the requirement established in 42 U.S.C. 3025(a)(2)(E);

3. Nutrition screening [~~and~~], malnutrition screening, counseling and nutrition education services to address a participant's assessed needs and ensure that nutrition funds are used to provide these services.

a. Nutrition screening and malnutrition screening shall be provided for all participants of the nutrition program for older persons as outlined in the state data system at least annually.

b. The results of this screening shall be reported to the department.

c. A participant who receives a nutrition score of six (6) or higher shall have documentation of further action based on a referral to a:

(i) Dietitian for nutrition counseling; or

(ii) Participant's physician;

d. A participant who receives a malnutrition score of two (2) or higher shall have documentation of further action based on a referral to a:

(i) Dietitian for nutrition counseling; or

(ii) Participant's physician;

e. A participant shall receive follow up regarding their nutrition and malnutrition screening score within three (3) months of the assessment date to address the needs and concerns.

4. Nutrition services to keep older persons healthy, reduce the older adult's risk of chronic disease and disability, and help the older adult to manage chronic diseases and conditions;

5. An emergency plan for back up food preparation sites, nutrition sites, and meal delivery; and

6. A plan for furnishing emergency meals during an emergency, such as:

a. Inclement weather conditions;

b. Power failure;

c. A disaster that may cause isolation; or

d. A medical emergency; and

(e) Use meal contributions to increase the number of meals served and facilitate access to these meals[~~; and~~

~~(f) Monitor the nutrition program a minimum of twelve (12) times per year to evaluate compliance with nutrition program policies and central kitchens a minimum of one (1) time per year~~].

(2) If the AAAIL is the provider of meals and services, the AAAIL shall comply with all responsibilities of the nutrition service provider as specified in Section 12 of this administrative regulation.

Section 10. Nutrition Site Operation. (1)(a) Congregate meal services shall be funded at a site if the site has been approved by the department, in accordance with this section.

(b) The services shall not become operational until the department grants written approval through review of:

1. A completed DAIL-NP-17.96 Kitchen Checklist; and

2. a. Pictures documenting compliance with the checklist; or

b. An on-site visit by the department.

(2) Prior to approval of any site, it shall be inspected by the following:

(a) A local health department for compliance with applicable health codes;

(b) A local fire department for compliance with fire and building safety codes; and

(c) The department for compliance with 42 U.S.C. 3027(a)(8).

(3) A site shall:

(a) Be located as near as possible to the target group of individuals;

(b) Comply with the confidentiality and disclosure requirements of KRS 194A.060(2); and

(c) Be clearly identified to the public with a sign.

(4)(a) Selection of a site to offer congregate meal services shall be based on information on older people in its service area and on the advice of public and voluntary agencies serving the elderly.

(b) The following factors shall be given consideration in choosing a site:

1. Demographic information and projections;

2. Accessibility to the maximum number of people who are socially or economically deprived;

3. Proximity to other services and facilities;

4. Convenience to public or private transportation or location within comfortable walking distance for participants;

5. Clear of structural barriers or difficult terrain; and

6. The safety and security of participants and staff.

(5) A site shall:

(a) Take necessary actions to create for handicapped older people barrier-free access and movement within the facility in conformance with the requirements of 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973;

(b) Make arrangements for security of site equipment, furniture, and files;

(c) Have signs visible for exits, entrances, and other areas of importance;

(d) Adopt procedures for fire safety, including:

1. Fire drills;

2. Inspection;

3. Maintenance of fire extinguishers; and

4. Training by fire department personnel; and

(e) Maintain and repair the site.

(6) A site that does not meet the requirements of subsection (5) of this section shall comply with a corrective action plan administered by the department.

(7)(a) A site shall have an individual, either volunteer or paid staff, who shall be responsible for the administration of the site.

(b) At least one (1) staff person or trained volunteer shall be present at the site during hours of operation.

(c) A site shall have available the following minimum services:

1. At least one (1) hot meal in accordance with Section 4 of this administrative regulation;

2. Outreach services that may be funded by Title III-B or Title III-C;

3. Information and referral; and

4. Nutrition education.

(d) An optional service may be home-delivered meals.

(e) A congregate meal shall be:

1. Prepared on site;

2. Catered; or

3. Prepared in a central kitchen.

Section 11. Kitchen Approval. (1) A new kitchen preparing a congregate meal or home delivered meal shall not become operational until inspected by the following:

(a) A local health department for compliance with applicable health codes;

(b) A local fire department for compliance with fire and building safety codes;

(c) An AAAIL inspector for compliance with DAIL-NP-17.96, Kitchen Checklist; and

(d) The department utilizing the DAIL-NP-17.96, Kitchen Checklist, submitted in accordance with Section 10(1)(b)1. and 2. of this administrative regulation, for compliance with:

1. Facility specifications;

2. Food preparation; and

3. Clean up.

(2) The department shall notify the AAAIL of kitchen operation approval within ten (10) days of the initial on-site visit.

Section 12. Responsibilities of Nutrition Service Providers. (1) The nutrition service provider contracting to provide meals and services shall have written policies and procedures to carry out the responsibilities of the service provider as established in this subsection. The nutrition service provider shall:

(a) Provide the AAAIL using the state data system with statistical and other information necessary for state reporting requirements established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018;

(b) Provide a recipient with an opportunity to voluntarily contribute to the cost of the service. Pursuant to 42 U.S.C. 3030c-2(b), voluntary contributions:

1. May be solicited if the method of solicitation is noncoercive; and

2. Shall be encouraged for an individual whose self-declared income is at or above 185 percent of the federal poverty level, at contribution levels based on the actual cost of the service;

(c) Assure that an older person shall not be denied service because the older person does not or cannot contribute to the cost of the service;

(d) Protect the privacy of each older person with respect to contributions;

(e) Report to appropriate officials, such as Department for Community Based Services, EMS, local law enforcement, for follow-up, conditions or circumstances which place the older person or his or her household in imminent danger;

(f) Make arrangements for services to older persons in weather-related or declared emergencies;

(g) Assist a participant with access to benefits under other programs;

(h) Employ staff to ensure that the service staff is based on the number of program participants and the type of services provided;

(i) Have a site director, on a paid or volunteer basis, responsible for activities at the site.

1. Congregate and home delivered meals funds shall pay up to a maximum of five (5) hours, per day, of a paid site director's time; and

2. Other funding sources may be used to pay for additional hours;

(j) Permit staff of the AAAIL, the cabinet, and federal representatives to monitor and inspect the operation of the site; and

(k) Attend meetings and training sessions as requested by the AAAIL and the department.

(2) The service provider contracting to provide meals only shall:

(a) Provide the AAAIL using the state data system with statistical and other information necessary for state reporting requirements established in KRS 205.465 and federal reporting requirements established in 42 U.S.C. 3018; and

(b) Abide by the requirements of subsection (1)(i) through (k) of this section.

Section 13. Meal Planning. (1) Nutrient dense meals shall be planned using preparation and delivery methods that preserve the nutritional value of foods. The use of saturated fats, salt, and sugar shall be restricted to maintain good health, in accordance with the dietary reference intakes and the Dietary Guidelines for Americans.

(2) Menus shall be:

(a) Planned through a formal procedure for soliciting participant comments established in each district;

(b) Planned a minimum of one (1) month in advance or, if a cycle menu is planned, used at least for five (5) weeks;

(c) In compliance with the Dietary Guidelines for Americans;

(d) Provided to each participating older individual and shall include a meal plan to provide:

1. A minimum of thirty-three and one-third (33 1/3) percent of the allowances established in the dietary reference intakes, if the individual is provided one (1) meal per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(I);

2. A minimum of sixty-six and two-third (66 2/3) percent of the allowances established in the dietary reference intakes, if the individual is provided two (2) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A) (ii)(II); or

3. 100 percent of the allowances established in the dietary reference intakes, if the individual is provided three (3) meals per day, pursuant to 42 U.S.C. 3030g-21(2)(A)(ii)(III);

(e) Altered to meet participant dietary needs such as low sugar, low salt, low fat, or low cholesterol;

(f) Certified by [~~the~~] a Kentucky licensed dietitian or Kentucky certified nutritionist as meeting the nutritional requirements, unless:[~~;~~]

1. Meals are provided through an approved national distribution center, and

2. Approved by the DAIL dietitian.

(g) Adhered to without substitution, unless a substitution is approved by the licensed dietitian or certified nutritionist. If a substitution is approved, the nutrition service provider shall provide a copy of the revised menu to the AAAIL; and

(h)1. Posted in a conspicuous location, including at each congregate meal site and each preparation site; or

2. Provided in advance to each participant receiving home delivered meals.

(3) Special menus which allow for modified meals, religious, ethnic, cultural, or regional dietary practices may be provided if foods and preparations are available.

(4)(a) Additional foods, such as fresh produce, baked items, or donated canned items, may be added to the meal to provide personal satisfaction and additional nutrition but shall not be considered part of the reimbursable program meal.

(b) Home-canned foods shall not be used.

(5)(a) If a potluck meal is served at a particular site, a congregate meal shall not be served at that site for that particular mealtime.

(b) Home delivered meals shall be provided on the same basis as if the potluck meal had not been scheduled.

Section 14. Food Procurement. (1) Foods purchased for use in the nutrition program shall be obtained from sources which conform to the nutritional requirements of 902 KAR 45:005.

(2)(a) Term contracts may be used for repetitively purchased items.

(b) Fixed quantity contracting shall be used if definite items and quantities can be determined for future delivery dates.

Section 15. Food Preparation. (1)(a) Standardized recipes shall be used in food preparation and yield shall be indicated.

(b) Recipes shall specify the yield and portion size adjusted for the requirements of the nutrition program for older persons.

(2) The standards established in this section shall apply for quality control.

(a) Food production standards.

1.The handling and preparation of food shall be conducted in safe and hygienic conditions pursuant to 902 KAR 45:005 State food service code.

2.[~~1.~~] Hot foods shall be produced within eight (8) hours preceding service unless otherwise directed in the recipe.

3.[~~2.~~] Protein foods shall be cooked completely once the cooking cycle has begun.

4.[~~3.~~] Foods to be served cold and neutral temperature foods may be prepared earlier than the preceding eight (8) hours if so directed in the recipe.

5.[~~4.~~] Solid and semisolid cooked foods stored under refrigeration shall be placed in containers that are no more than four (4) inches in depth.

(b) The holding time for hot foods shall not exceed four (4) hours after preparation.

(c) Temperature standards.

1. Hot foods shall be packed at temperatures of at least 160 degrees Fahrenheit, and the internal temperature of hot foods to be transported shall be at least 135 degrees Fahrenheit during transportation and service.

2. Cold foods shall not exceed forty-one (41) degrees Fahrenheit during transportation and service.

3. Thermometers used to check food temperatures shall be:

a. Of metal stem-type construction;

b. Numerically scaled;

c. Accurate to plus or minus three (3) degrees Fahrenheit; and

d. Checked periodically to ensure that each thermometer is registering accurately.

4. Food temperatures for both hot and cold items shall be checked and recorded daily at the kitchen and at the site of service.

5. Infrared thermometers may be used for lettuce-based salads, sandwich garnishes, and during the home delivery route to check weekly temperatures of hot and frozen meals.

(3)(a) Food preparation facilities shall be in compliance with state and local fire, health, sanitation, and safety administrative regulations which apply to food service operations.

(b) A food preparation and service kitchen shall be inspected periodically by state and local health officials and the department dietitian.

(4) Standards for food handling and personal hygiene shall be

in accordance with the food service requirements of the Kentucky Food Code governed by 902 KAR 45:005.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-NP-17.96 Kitchen Checklist", edition 5/12; and

(b) [~~"DAIL-NP-17.9.8, Meal Planning Nutrient Requirements", December 30, 2009; and~~

~~(c)~~] "Dietary Guidelines for Americans", most current version [~~2010~~], U.S. Department of Agriculture, and U.S. Department of Health and Human Services and may be accessed online at www.dietaryguidelines.gov.

(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.[

~~(3) The Dietary Guidelines for Americans may be accessed online at www.dietaryguidelines.gov.~~]

VICTORIA ELRIDGE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 4, 2021

FILED WITH LRC: November 12, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 24, 2022, 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 January 14, 2022, 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 January 31, 2022. 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: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Phyllis Sosa or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended regulation helps provide guidance that follows the Older Americans Act Nutrition programs.

(b) The necessity of this administrative regulation: This amended regulation is needed to ensure that agencies receiving Older Americans Act funding are following the same guidance and have an outlined expectation of the programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation amendment uses the authorized statutes as a base to build the guidance provided in this regulation. This amended regulation allows Kentucky to provide more in-depth detail of the Older Americans Act Nutrition Program that best fits the needs of Kentucky's older adults.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation will clarify expectations for Older Americans Act Nutrition 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 includes updates based on the USDA "Dietary Guidelines for Americans" that was recently updated in 2020. The amended administrative regulation also updates disaster/emergency preparedness requirements. The amendment also allows seniors the opportunity to receive culturally or therapeutic appropriate meals.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to comply with current guidelines relevant to the Older Americans Act.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the existing statutes by aligning expectations in accordance with updated federal guidelines that effect Kentucky's older adult population.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides specific expectations that follow the existing statutes to best serve the older adults of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department for Aging and Independent Living; 15 Kentucky Area Agency on Aging (which may include local governments on their boards); 1 million senior citizens living in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed amendments are suggested based on needs of the agencies. The proposed amendments will impact these agencies in a positive way keeping in mind the health and well-being of the older adults of Kentucky.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These agencies will need to insure they meet the specified expectations in the amendment. These amendments are to help simplify and streamline services while being mindful of budgets as well as keeping Kentucky's older adults in mind.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The proposed amended regulation will not increase costs and may result in an actual reduction in costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended regulation should result in cost savings to providers as well as loosening some of the current regulations.

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

(a) Initially: None. Services are currently in place and there is no additional cost.

(b) On a continuing basis: None. Services are currently in place and 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: Older Americans Act funding, State and Local funds

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need for an increase of funding requests to implement these proposed changes.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees will be increased based on this amended regulation.

(9) TIERING: Is tiering applied? There is no tiering for this program as there are no fees related to this program or regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 3030a to 3030g-22

2. State compliance standards. KRS Chapter 45A,

194A.060(2), 205.201, 205.203, 205.455(4), 205.460, 205.465, 209A.030, 310.005, 310.021, 310.031

3. Minimum or uniform standards contained in the federal mandate. 29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 3030a to 3030g-22

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 and does not impose stricter requirements than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment to the administrative regulation is consistent with federal requirements and does not impose stricter requirements than the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department for Aging and Independent Living; 15 Kentucky Area Agency on Aging (which may include local governments on their boards)

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 45A, 194A.060(2), 205.201, 205.203, 205.455(4), 205.460, 205.465, 209A.030, 310.005, 310.021, 310.031, 29 U.S.C. 794, 42 U.S.C. 3018, 3025, 3027, 3030a to 3030g-22

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amended regulation will not affect expenditures and revenue. Services are currently in place and there is no additional cost.

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

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

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

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

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(New Administrative Regulation)

30 KAR 5:011. Definitions for 30 KAR Chapter 5.

RELATES TO: KRS Chapter 355.9
STATUTORY AUTHORITY: KRS 355.9-526(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the definitions for those administrative regulations.

Section 1. Definitions. (1) "Active Record" means a UCC record stored in the UCC information management system and indexed in, but not yet removed from, the searchable index.
(2) "Address" means either:
(a) A street address, route number or post office box number plus the city, state and zip code; or
(b) An address that purports to be a mailing address outside of the United States of America.
(3) "Amendment" means a UCC record that relates to an initial financing statement, including party or collateral changes, assignments, continuations, and terminations.
(4) "Assignment" means an amendment that assigns all or part of a secured party's power to authorize an amendment to a financing statement.
(5) "Delivery" means communication of a tangible UCC record.
(6) "Filer" means a person who communicates a UCC record to the filing office for filing.
(7) "Filing office" means the Office of the Kentucky Secretary of State.
(8) "Filing office statement" means a statement entered into the filing office's information management system to correct an error made by the filing office.
(9) "Information statement" means a UCC record that indicates a financing statement is inaccurate or wrongfully filed.
(10) "Individual debtor name" means any name provided as a debtor name in a UCC record in a format that identifies the name as that of the debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.
(11) "Initial financing statement" means a UCC record that causes the filing office to establish the initial record of filing of a financing statement.
(12) "Remitter" means a person who delivers a tangible UCC record to the filing office for filing and awaits an immediate determination as to whether the UCC record will be accepted or rejected.
(13) "Searchable index" means the retrievable list of individual debtor names and organization debtor names together with associated file numbers the filing office maintains in the UCC information management system as active records.
(14) "Secured party of record" means a secured party as defined in KRS 355.9-102(1)(bu) who meets the additional requirements established in KRS 355.9-511.
(15) "Tangible UCC record" means a UCC record that has been printed on paper.
(16) "Time of filing" means the time of day on the date a UCC record is deemed filed under this regulation.
(17) "UCC" means the Uniform Commercial Code as adopted in the Commonwealth of Kentucky.
(18) "UCC information management system" means the computer system used by the filing office to store, index, and retrieve information relating to financing statements as required by 30 KAR 5:041.
(19) "UCC record" means an initial financing statement, an affidavit of wrongfully filed record, an amendment, a filing office statement, or an information statement and includes a record thereof maintained by the filing office. The term shall not be deemed to refer exclusively to paper or paper-based writings.
(20) "Unlapsed record" means a UCC record that has been stored and indexed in the UCC information management system and that has not yet lapsed under KRS 355.9-515 with regard to all secured parties of record.

MICHAEL G. ADAMS, Secretary of State
APPROVED BY AGENCY: October 21, 2021
FILED WITH LRC: October 29, 2021 at 1:32 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2022, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 January 31, 2022. 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: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes definitions for 30 KAR Chapter 5.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing definitions for purposes of filing office rules.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing definitions for filing office rules that are consistent with KRS Chapter 355, Article 9, and model UCC regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by establishing clearly defined terms with regard to administrative regulations governing the filing, indexing, and retrieval of UCC records.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statues: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the Office of the

Secretary of State and any individual, business, organization or governmental entity that files or conducts a search of UCC records.

(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 Office of the Secretary of State already utilizes the definitions contained in this administrative regulation. Other individuals or entities identified in question (3) may need to familiarize themselves with the contents of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does not establish any new fees and the Office of the Secretary of State will not incur any additional costs to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation provides uniformity and certainty with regard to terms used in administrative regulations governing the filing, search and retrieval of UCC records.

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

(a) Initially: There will be minimal to no cost to implement this administrative regulation. The Office of Secretary of State currently utilizes these definitions.

(b) On a continuing basis: There will be minimal to no costs to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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 Office of the Secretary of State and units, parts, or divisions of state or local government to the extent those entities are a party to, or conduct a search of, a UCC record.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526.

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.

(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? There will be minimal to no additional cost to administer this program for the first year. The Office of Secretary of State currently utilizes the definitions contained in this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency to administer the processing or search of UCC records under Article 9 or to other state and local agencies to file those records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(New Administrative Regulation)

30 KAR 5:021. Filing methods and forms.

RELATES TO: KRS 355.9, 355.9-516, 355.9-521

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the general provisions for 30 KAR Chapter 5 governing delivery, approved forms, payments and public services.

Section 1. UCC records may be communicated to the filing office as follows:

(1) Direct data entry using the online filing system of the filing office. The time of filing for a UCC record communicated by this method shall be when the entry of all required elements of the UCC record in the proper format is accepted by the online filing system.

(2) Email to the email address designated by the filing office website. The time of filing for a UCC record communicated by this method shall be when the email communicating the UCC record is first received by the filing office.

(3) Personal delivery by remitter at the physical address of the filing office. The time of filing for a UCC record delivered by this method shall be when a UCC record is accepted for filing by the filing office.

(4) Delivery of a UCC record other than by remitter at the filing office physical address. The time of filing for a UCC record delivered by this method shall be 4:30 p.m. on the date the record was delivered to the filing office.

Section 2. (1) Information submitted to the filing office shall be provided using only characters that appear on the American standard keyboard. A financing statement or amendment form shall designate separate fields for:

(a) Organization names; and

(b) Individual names. Individual name fields shall include surname, first personal name, additional names, initials, and suffixes for individual names.

(2) (a) The appropriate box on a financing statement shall be marked to indicate when:

1. An initial financing statement is being filed in connection with a manufactured home;

2. An initial financing statement is being filed in connection with a public finance transaction; or

3. An initial financing statement is being filed against a debtor that is a transmitting utility.

(b) If the requirements of this section are not met, the filing shall not affect the filing office's determination of the lapse date

under 30 KAR 5:041, Section 7.

Section 3. Paper-based forms identified in Section 6, or any form that is substantially the same, shall be utilized for the purpose for which the form is designated.

Section 4. Filing fees may be paid by the following methods:
(1) Debit and credit cards issued by approved issuers;
(2) Electronic checks processed under National Automated Clearing House Association ("NACHA") rules and arrangements;
(3) Prepaid account upon the submission and approval of an Application for Prepaid Account and payment of an amount not less than $250;
(4) Personal checks, cashier's checks, certified checks, and money orders made payable to the Kentucky State Treasurer;
(5) Cash; and
(6) Interaccount from Kentucky state agencies.

Section 5. (1) The filing fee for a UCC record shall be determined by KRS 355.9-525.
(2) The filing office shall refund the amount of an overpayment.

Section 6. (1) The following forms are incorporated by reference:
(a) "Application for Prepaid Account" (10/5/11);
(b) "UCC Financing Statement (Form UCC1), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);
(c) "UCC Financing Statement Addendum (Form UCC1Ad), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);
(d) "UCC Financing Statement Additional Party (Form UCC1AP Rev. 8/22/11), International Association of Commercial Administrators (IACA)";
(e) "UCC Financing Statement Amendment (Form UCC3), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);
(f) "UCC Financing Statement Amendment Addendum (Form UCC3Ad), International Association of Commercial Administrators (IACA)" (Rev. 4/20/11);
(g) "UCC Financing Statement Amendment Additional Party (Form UCC3AP), International Association of Commercial Administrators (IACA)" (Rev. 8/22/11);
(h) "Information Statement (Form UCC5), International Association of Commercial Administrators (IACA)" (Rev. 7/19/12);
(i) "Information Request (Form UCC11)" (Rev. 7/19/12);
(j) "Affidavit of Wrongfully Filed Record" (9/16/21); and
(k) "Request for Secured Party Name Search Form" (6/21).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Secretary of State, Office of Business Services, Records Section, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MICHAEL G. ADAMS, Secretary of State
APPROVED BY AGENCY: October 21, 2021
FILED WITH LRC: October 29, 2021 at 1:32 p.m.
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CONTACT PERSON: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes methods for communicating UCC records to the Secretary of State filing office, establishes required forms, the content of those forms, and acceptable forms of payment for required filing fees.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing filing office rules.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, and model UCC regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by establishing filing office rules.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statues: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects any individual, business, organization, or governmental entity that files or conducts a search of UCC records.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals or entities identified in question (3) will have to familiarize themselves with the contents of this regulation and incorporated forms.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur costs in direct correlations to the number of UCC records they file, or search, and in accordance with statutory or regulatory fees. This regulation itself does not establish any new fees.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty as to filing methods and forms for UCC filings or UCC record searches made with the Office of the Secretary of State.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no cost to implement this administrative regulation.
(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: An increase in fees or funding will not be necessary to implement this administrative regulation.
(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 not appropriate in this administrative regulation because the administrative regulation applies equally to similarly situated individuals and entities regulated by it and any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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 units, parts or divisions of state or local government to the extent they file or search UCC records.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526.

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.

(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? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency to administer the filing, indexing, and retrieval of UCC records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(New Administrative Regulation)

30 KAR 5:031. Acceptance and refusal of records.

RELATES TO: KRS. KRS 355.9-513A, 355.9-515, 355.9-516, 355.9-516A, 355.9-520, 446.030

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the requirements relating to the acceptance and refusal of records.

Section 1. The filing office shall refuse to accept a UCC record for any reason, or multiple reasons pursuant to KRS 355.9-516. The filing office may refuse to accept a UCC record pursuant to KRS 355.9-516A.

Section 2. Except for UCC records rejected under KRS 355.9-516A of this administrative regulation, the duties and responsibilities of the filing office with respect to the administration of the UCC shall be ministerial. In accepting for filing or refusing to file a UCC record the filing office shall not:

(1) Determine the legal effect of the UCC record;

(2) Determine that information in the record is correct or incorrect, in whole or in part; or

(3) Create a presumption that information in the record is correct or incorrect, in whole or in part.

Section 3. (1) A continuation statement may be filed: six (6) months preceding the month in which the financing statement would lapse and on the date that corresponds with the date the financing statement would lapse or if there is no corresponding date, on the last day of that month.

(2) The last day on which a continuation statement may be filed shall be the date upon which the related financing statement lapses, or the next business day the filing office is open for business.

Section 4. (1) If the filing office finds grounds to refuse a UCC record, the filing office shall refund the filing fee and return the record or a copy of the record in accordance with KRS 355.9-520(2).

(2) The reason or reasons for the refusal and other related information shall be made to the filer as soon as practicable, but no later than two (2) business days after the refused UCC record was received by the filing office. This information shall be provided by the same method by which the UCC record was communicated to the filing office, by mail, or by a more expeditious means.

(3) Records of refusal, including a copy of the refused UCC record and the grounds for refusal, shall be maintained until the first anniversary of the lapse date that applies or would have applied to the related financing statement, assuming that the refused record had been accepted and filed.

Section 5. The filing office may communicate to a filer that the filing office noticed potential defects in a UCC record, whether or not it was filed or refused for filing.

Section 6. If a filer believes that a UCC record that was refused for filing should not have been refused, the filer may contact the filing office to request a review of the refusal decision. The filer shall provide a copy of the refused record and a statement of the basis for the belief that the filing office wrongfully refused to file the record. Upon receipt of a request for review, the filing office shall investigate the claim. If the filing office confirms that the record should have been refused, the filing office shall provide a written explanation of the grounds for refusal. If it is determined that the filing office refused to accept the record in error, the filing office shall file the UCC record with the filing date and time the UCC record was originally communicated for filing. A filing office statement relating to the relevant financing statement shall be placed in the UCC information management system on the date that the corrective action was taken. The filing office statement shall provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the financing statement maintained in the UCC information management system.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: October 29, 2021 at 1:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2022, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 January 31, 2022. 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: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures governing the acceptance and refusal of UCC records submitted for filing with the Office of the Secretary of State.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing filing office rules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, and model UCC regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by providing uniformity and certainty with regard to the acceptance or refusal of UCC records submitted for filing.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statues: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects any individual, business, organization, or governmental entity that is submitting a UCC record for filing.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals or entities identified in question (3) will have to familiarize themselves with the contents of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur costs in direct correlation to the number of UCC records they file and in accordance with statutorily established fees. This regulation does not establish any new fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty as to the acceptance or refusal of UCC filings made with the Office of the Secretary of State.

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

(a) Initially: There will be no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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 units, parts, or divisions of state or local government to the extent those entities submit UCC records for filing.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526.

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.

(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? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency to administer the filing, indexing, and retrieval of UCC records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(New Administrative Regulation)

30 KAR 5:041. UCC Information management system.

RELATES TO: KRS Chapter 355.9-515, 355.9-519, 355.9-526

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the requirements for the UCC information management system.

Section 1. The filing office shall use an information management system to store, index, and retrieve information relating to financing statements.

Section 2. (1) Individual debtor names shall be stored in data files that include only the individual debtor names, and not organization debtor names. Separate data entry fields shall be established for surnames, first personal names, and additional names or initials and suffixes.

(2) The filing office shall enter a name into the corresponding data entry field of the UCC information management system exactly as it appears on a UCC record.

(3) Individual name fields in the UCC information management system shall be fixed to fifty (50) characters in length by the filing office. A name that exceeds the fixed length shall be truncated after it exceeds the maximum length of the data entry field.

Section 3. (1) Upon the filing of an amendment, the names of the parties indexed in the UCC information management system remain unchanged, except that in the case of an amendment that adds a debtor or a secured party, the new debtor or new secured party shall be added to the appropriate index and associated with the record of the financing statement in the UCC information management system. An amendment that designates an assignee shall cause the assignee to be added as a secured party of record with respect to the affected financing statement in the UCC information management system. The filing of an amendment that deletes a debtor or a secured party from a financing statement shall not delete data from the UCC information management system.

(2) Except in the case of a continuation statement, the filing of an amendment shall not affect the period of effectiveness of the financing statement.

Section 4. The filing of a termination statement shall not cause an active record to be removed from the searchable index.

Section 5. An information statement may be filed prior to the lapse of the financing statement to which it relates but shall have no effect upon the information indexed in the UCC information management system.

Section 6. A filing office statement shall affect the indexing of parties and of the relevant financing statement as provided in the corrective action described in the filing office statement.

Section 7. If no timely filing of a continuation statement is filed, a financing statement lapses on its lapse date but shall remain indexed as an active record for one (1) year, after which the filing office shall remove the financing statement and all related UCC records from the searchable index. Upon the removal from the searchable index, the removed UCC records shall cease to be active records.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: October 29, 2021 at 1:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2022, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 January 31, 2022. 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: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures governing the establishment of a UCC information management system and the procedures for managing data entered into that system.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing filing office rules and to comply with KRS 355.9-519, relating to numbering, maintaining, and indexing of UCC records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, model UCC regulations, and KRS 355.9-519

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by establishing filing office rules and providing uniformity and certainty with regard to the maintenance and retrievability of UCC records.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statues: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects any individual, business, organization, or governmental entity that files or conducts a search of UCC records.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals or entities identified in question (3) will have to familiarize themselves with the contents of this regulation if they are a party to a UCC financing statement or need to search or retrieve UCC records.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does not establish any new fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty with regard to the storage, indexing, and retrieval of UCC records on file with the Office of the Secretary of State.

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

(a) Initially: There will be no cost to implement this administrative regulation. The UCC information management is currently established.

(b) On a continuing basis: There will be minimal to no costs to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change, if it is an amendment: An increase in fees or funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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 units, parts, or divisions of state or local government to the extent those entities are a party to a UCC record.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526 and KRS 355.9-519.

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.

(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? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency to administer the processing and approval or refusal of UCC filings under Article 9 or to other state and local agencies to file those records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(New Administrative Regulation)

30 KAR 5:051. Filing, indexing, and data entry procedures.

RELATES TO: KRS 355.9-515, 355.9-519, 355.9-526

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes requirements relating to filing, indexing, and data entry procedures.

Section 1. Data shall be entered into the UCC information management system exactly as provided in a UCC record, without regard to apparent errors.

Section 2. The filing office shall compare data from tangible UCC records with data entered by the filing office to verify accurate data entry.

Section 3. The filing office shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

Section 4. The filing office shall, to the extent reasonably possible, redact certain personal information from the information it provides to searchers and bulk data purchasers in accordance with applicable privacy and identity theft protection laws.

Section 5. The filing office may correct data entry and indexing errors of filing office personnel in the UCC information management system at any time. If a correction is made to a UCC record the filing office shall associate a filing office statement with the corrected UCC record in the UCC information management system on the date that the corrective action was taken. The filing office statement shall provide the date the filing office statement was filed and an explanation of the correction.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: October 29, 2021 at 1:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2022, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 January 31, 2022. 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: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes filing, indexing, and data entry procedures for the Office of the Secretary of State with regard to UCC records.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing filing office rules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, and model UCC regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by establishing filing office rules and providing uniformity and certainty with regard to filing, indexing, and data entry procedures for UCC records on file with the Office of the Secretary of State.

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

(a) How the amendment will change this existing administrative

regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statues: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the Office of the Secretary of State and any individual, business, organization or governmental entity that has submitted a UCC record for filing.

(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 Office of the Secretary of State already follows the procedures contained in this administrative regulation. Other individuals or entities identified in question (3) may need to familiarize themselves with the contents of this regulation if they are a party to a UCC financing statement or need to search or retrieve UCC records.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does not establish any new fees and the Office of the Secretary of State will not incur any additional costs to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty with regard to filing, indexing and data entry procedures with regard to UCC records on file with the Office of the Secretary of State.

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

(a) Initially: There will be no cost to implement this administrative regulation. The Office of Secretary of State currently follows these procedures.

(b) On a continuing basis: There will be minimal to no costs to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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 Office of the Secretary of State and units, parts, or divisions of state or local government to the extent those entities are a party to a UCC record.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526.

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.

(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? There will be no additional cost to administer this program for the first year. The Office of Secretary of State currently follows the procedures set forth in this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency to administer the processing and approval or refusal of UCC filings under Article 9 or to other state and local agencies to file those records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Licensure for Massage Therapy
(New Administrative Regulation)

201 KAR 42:061. Code of ethics and standards of practice for massage therapists.

RELATES TO: KRS 309.355(1), (3), 309.362

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the Board of Licensure for Massage Therapy to administer and enforce the provisions of KRS 309.350 to 309.364. KRS 309.355(3) requires the board to establish by administrative regulation a code of ethics and standards of practice for massage therapists. This administrative regulation establishes those standards, which, if violated, are a basis for disciplinary action under KRS 309.362.

Section 1. Code of Ethical Standards for the Massage Therapist. A massage therapist shall:

(1) Maintain the confidentiality of all client information, unless law or court order mandates disclosure;

(2) Keep the client well informed of procedures and methods that will be employed during the session;

(3) Report to the board if the massage therapist has first-hand knowledge or evidence indicating any unethical, incompetent, or illegal act has been committed by another licensee;

(4) Take precautions to do no harm to the physical, mental, and emotional well-being of clients or associates;

(5) Make every reasonable effort to report unlicensed practice of massage therapy to the board;

(6) Represent his or her educational and professional qualifications honestly;

(7) Inform clients of the limitations of the licensee's practice;

(8) Consistently take measures to improve professional knowledge and competence by a regular assessment of personal and professional strengths and weaknesses through continuing education training;

(9) Respect the client's right to treatment with informed and voluntary consent, either verbal or written, and to refuse, modify, or terminate treatment regardless of prior consent;

(10) Not engage in sexual conduct or activities with a client;

(11) Not engage in an interest, activity, or influence that conflicts with the practitioner's obligation to act in the best interest of the client;

(12) Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and reasonable expectations of professional behavior;

(13) Refuse to accept gifts or benefits, which are intended to influence a referral or treatment that are purely for personal gain and not for the good of the client;

(14) Conduct all business and professional activities with honesty and integrity;

(15) Respect the inherent worth of all clients;

(16) Provide only those services that the licensee is qualified to perform; and

(17) Respect the client's autonomy.

Section 2. Standards of Practice for the Massage Therapist. (1) In the practice of massage therapy, a massage therapist shall:

(a) Perform a written or verbal intake interview with the client to evaluate if any contraindications to massage therapy exist and if modifications including pressure, technique, and duration of treatment are applicable;

(b) Evaluate each client through observation, palpation, and any relevant records provided by the client;

(c) Acknowledge the limitations of, and contraindications for, massage;

(d) Plan and implement a treatment session or program individualized for the client;

(e) Refer the client to other professionals or services if the treatment or service is beyond the massage therapist's scope of practice;

(f) Maintain for a minimum period of five (5) years accurate, timely, and organized records of every client;

(g) Provide massage therapy services that meet or exceed the generally accepted practice of the profession;

(h) If a plan of care or treatment is applicable, explain the plan to the client, to others designated by the client, and to professionals with client permission;

(i) Unless prohibited by law, be allowed to pool or apportion fees received with other members of a business entity in accordance with any business agreement;

(j) Practice massage therapy in sanitary and safe conditions;

(k) Use proper draping technique;

1. Before beginning a massage, the therapist must explain to the client the draping techniques that will be used; and

2. Provide the client a clean drape large enough for the purpose of draping the buttocks, genitalia, and chest. Such body parts must remain covered except during therapeutic treatment of those specific areas, with the exception of the genitalia, which shall always remain covered; and

(l) Have the right to refuse to treat any person or part of the body at the licensee's discretion.

(2) In the practice of massage therapy, a massage therapist shall not:

(a) Provide treatment to the anus or anal canal, including, but not limited to, colonic irrigations and enemas; or

(b) Provide treatment to the genitals, including, but not limited to, erectile dysfunction or pelvic floor issues.

(3) Interacting with other medical professionals. With written permission from the client, the massage therapist may interact with the client's physician or other healthcare providers if the client is under direct medical care.

(4) If the client is self-referred and under the care of a health care professional, the massage therapist may, with written permission from the client:

(a) Advise the health care professional that the patient is seeking massage treatment;

(b) Provide to the health care professional the massage therapist's evaluation results;

(c) Advise the health care professional of the noted treatment plan; and

(d) Provide a follow-up report upon completion of the massage treatment plan to enhance communication between the multidisciplinary care-giving team.

(5) Breast massage. A licensee performing massage of the tissue of the breast shall:

(a) Obtain the client's informed written consent prior to providing the service;

(b) Maintain proof documenting specialized training in breast massage which addresses breast anatomy, breast pathology, and breast massage technique and which was provided by an approved massage therapy program or board approved continuing education provider;

(c) Inform the client prior to the commencement of the service that this service may be performed through a draping sheet if the client so desires and the licensee shall provide the service through a draping sheet if the client so prefers;

(d) Inform the client prior to the commencement of the service that the client may discontinue the service at any time and the licensee shall honor that election by discontinuing the provision of the service if that request is made;

(e) Keep detailed Subjective Objective Analysis Plan notes for the service such as notes related to all emotional factors that the client reports to the licensee which might impact the client's suitability for the service and the precautions that the licensee has taken to ensure that the service is provided in a manner accounting for those emotional factors; and

(f) Refrain from an act or statement which the client may construe as being sexual in nature.

Section 3. Standards for Documentation. The massage therapist and client shall agree upon the purpose of the massage session.

(1) Documentation shall not be required if the massage session is for general relaxation, a sports event massage, or public demonstration as in chair massage.

(2) If a written plan of treatment is requested or required, the client file shall include the following documentation:

(a) The initial evaluation, which shall include:

1. The client's name, age, and gender;

2. Date of the session; and

3. Pertinent medical history, including:

a. Client sensitivities and allergies;

b. Medical diagnoses, if available, and the source of the diagnosis;

c. Contraindications; and

d. Medications as disclosed by the client;

(b) Progress notes signed by the massage therapist rendering the massage therapy, which shall include:

1. Subjective information including the area of complaint as stated by the client and the date of onset;

2. Objective information including any observations and objective testing, if applicable;

3. Ongoing assessments, if applicable;

4. Actions taken by the massage therapist; and

5. The client response to massage therapy treatment; and

(c) A plan of treatment, if applicable, consisting of:

1. Modalities to be rendered;

2. Frequency and duration of treatment;

3. Referral to other professionals, if indicated;

4. Client self-help education and instruction; and

5. The goals or desired outcome of the treatment.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 1:00 p.m. EST on January 31, 2022, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:
Join from PC, Mac, Linux, iOS or Android:
https://us06web.zoom.us/j/89285321804?pwd=aVQxcVpzL3BwN3

N4enl6M3Mxd2hvdz09
Password: 834891

Or Telephone:
Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 213515

Find local AT&T Numbers:
https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=213515

Or an H.323/SIP room system:
H.323:
162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 892 8532 1804
Password: 834891

SIP: 89285321804@zoomcrc.com
Password: 834891

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 (January 24), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. EST on January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the Code of Ethics that licensed massage therapists are required to follow.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and clarify the requirements for practicing massage therapy in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation updates and clarifies the requirements for the practice of massage therapy in Kentucky. It replaces 201 KAR 42:060, which expired during the promulgation process for proposed amendments to that administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: Not applicable. The proposed regulations replaces 201 KAR 42:060, which recently expired during the promulgation process for proposed amendments to that administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. The proposed regulations replaces 201 KAR 42:060, which recently expired during the promulgation process for proposed amendments to that administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. The proposed regulations replaces 42:060, which recently expired during the promulgation process for proposed amendments to that administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. The proposed regulations replaces 201 KAR 42:060, which recently expired during the promulgation process for proposed amendments to that administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 2,665 individuals licensed by the Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will have to educate themselves on requirements and conform their conduct accordingly.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. The licensees have to conform their conduct to the Code of Ethics.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will continue to be licensed as massage therapists and will be in compliance with this administrative regulation.

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

(a) Initially: None. It updates and clarifies the requirements to maintain a massage therapy license in Kentucky. No additional complaints or violations are anticipated.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost to the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Licensure for Massage Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), 309.355(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. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures:

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(Repealer)

201 KAR 43:071. Repeal of 201 KAR 43:070.

RELATES TO: KRS 319C.060(1)

STATUTORY AUTHORITY: KRS 319C.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060 authorizes the Kentucky Applied Behavior Analysis Board to promulgate administrative regulations required to establish qualifications and requirements for supervisees of a behavior analyst. This administrative regulation repeals 201 KAR 43:070 because the necessary substantive provisions of that regulation have been incorporated into other existing administrative regulation concerning the same subject matter for improved efficiency and ease of use.

Section 1. 201 KAR 43:070, Supervisees, is hereby repealed.

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/88507454480?pwd=NnAwczNBZTU5TnA3YkRvYWd1Z01MZz09

Password: 729285

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 913047

Find local AT&T Numbers:
https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=913047

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)
162.255.36.11 (US East)
115.114.131.7 (India Mumbai)
115.114.115.7 (India Hyderabad)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
103.122.166.55 (Australia Sydney)
103.122.167.55 (Australia Melbourne)
149.137.40.110 (Singapore)
64.211.144.160 (Brazil)
149.137.68.253 (Mexico)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
207.226.132.110 (Japan Tokyo)
149.137.24.110 (Japan Osaka)
Meeting ID: 885 0745 4480
Password: 729285
SIP: 88507454480@zoomcrc.com
Password: 729285

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319C.060 authorizes the Kentucky Applied Behavior Analysis Board to promulgate administrative regulations required to establish qualifications and requirements for supervisees of a behavior analyst. This administrative regulation repeals 201 KAR 43:070 because the necessary substantive provisions of that regulation have been incorporated into other existing administrative regulation concerning the same subject matter for improved efficiency and ease of use.

(b) The necessity of this administrative regulation: The contents of currently effective 201 KAR 43:070 are now incorporated into other regulations, and therefore its continued existence is redundant.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319C.060 authorizes the Kentucky Applied Behavior Analysis Board to promulgate administrative regulations required to establish qualifications and requirements for supervisees of a behavior analyst. This administrative regulation repeals 201 KAR 43:070 because the necessary substantive provisions of that regulation have been incorporated into other existing administrative regulation concerning the same subject matter for improved efficiency and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

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

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: n/a

(b) The necessity of the amendment to this administrative regulation: n/a

(c) How the amendment conforms to the content of the authorizing statutes: n/a

(d) How the amendment will assist in the effective administration of the statutes: n/a

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 11 licensed assistant behavior analysts, 482 licensed behavior analysts, 6 temporary behavior analysts, and 6 temporary registered telehealth providers.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: None.

(c) As a result of compliance, what benefits will accrue to the entities: repealing this regulation will allow licensees to have a more clear understanding of the requirements for supervisees

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Applied Behavior Analysis Licensing Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319C.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? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(New Administrative Regulation)

201 KAR 43:090. Voluntary inactive and retired status.

RELATES TO: KRS 319C

STATUTORY AUTHORITY: KRS 319C

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C authorizes the board to promulgate administrative regulations required to establish conditions for inactive and retired status. This administrative regulation establishes procedures for inactive and retired status.

Section 1. Conditions for Inactive Status. Inactive status may be granted to a licensee who is currently not working as a behavior analyst or assistant behavior analyst within the Commonwealth of Kentucky but intends to resume providing those services in the future.

Section 2. Application for Inactive Status. (1) A licensee requesting inactive status shall submit a completed an "Application for Inactive or Retired Status", Form ABA-005, to the board and include the following information:

(a) Current home address, email address, and phone number;

(b) Final date of employment in the practice of applied behavior analysis within the Commonwealth of Kentucky; and

(c) Anticipated date of return to employment in the practice of applied behavior analysis within the Commonwealth of Kentucky.

(2) Terms and Responsibilities. Individuals on inactive status shall:

(a) Continue to receive general licensure updates from the board; and

(b) Comply with the code of ethical standards as established in 201 KAR 43:040.

Section 3. Reactivation Requirement for Inactive Status. A licensee seeking restoration to active status shall:

(1) Notify the board prior to returning to practice in Kentucky by submitting a Renewal and Reinstatement Application, Form ABA-004 and paying the required fees as established in 201 KAR 43:030, including a reinstatement fee.

(2) A licensee seeking reinstatement shall also meet certification and licensure requirements as provided in KRS 319C.080 and show an active BCBA certification.

(3) Individuals on inactive status shall not practice or use state licensure initials, including LBA, LaBA, TLBA, and TLaBA.

(4) Failure to complete reinstatement of a license prior to practicing applied behavior analysis in Kentucky shall constitute a violation of the Kentucky Applied Behavior Analyst Board code of ethical standards as established in 201 KAR 43:040 and shall result in referral to the board for the complaint and/or disciplinary process, in accordance with the procedures outlined in 201 KAR 43:060.

(5) Upon resumption of practice, the licensed assistant behavior analyst shall document compliance with supervisory requirements and shall report on his or her activities and employment related to behavior analysis during the period in which the analyst did not practice.

Section 4. Conditions for Retired Status. (1) Retired status is an acknowledgement of service that may be granted to a licensed behavior analyst or licensed assistant behavior analyst who has retired and will no longer be conducting the practice of applied

behavior analysis in any jurisdiction.

(2) The board may grant retired status to a licensee if the individual:

(a) Is at least sixty-five (65) years of age; or

(b) Has been a license holder in the Commonwealth of Kentucky for at least twenty-five (25) years; or

(c) Suffers an illness or medical disability that renders the licensee unable to continue the practice of applied behavior analysis.

Section 5. Application for Retired Status. (1) Retired status may be granted to a licensee upon submission of a completed an "Application for Inactive or Retired Status", Form ABA-005, to the board and should include the following information:

(a) Current home address, email address, and phone number;

(b) Condition(s) meeting eligibility for retired status; and

(c) Final date of employment in the practice of applied behavior analysis within the Commonwealth of Kentucky.

(2) Terms and Responsibilities. A credential holder granted retired status by the board shall:

(a) Be relieved of the obligation to pay the renewal fees under 201 KAR 43:030; and

(b) Use the designation "-R" at the end of the acronym for the appropriate credential such as, LBA-R or LaBA-R; and

(c) Shall comply with the code of ethical standards as established in 201 KAR 43:040.

Section 6. Incorporation by Reference. (1) Form ABA-005, "Application for Inactive or Retired Status", October 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be found on the board's Web site at aba.ky.gov.

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 2:00 p.m. in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: https://governor.ky.gov/covid-19. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android: https://us06web.zoom.us/j/88507454480?pwd=NnAwczNBZTU5TnA3YkRvYWd1Z01MZz09

Password: 729285

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 913047

Find local AT&T Numbers:
https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=913047

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 885 0745 4480

Password: 729285

SIP: 88507454480@zoomcrc.com

Password: 729285

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2022. 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: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782-8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 319C authorizes the board to promulgate administrative regulations required to establish conditions for inactive and retired status. This administrative regulation establishes procedures for inactive and retired status.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 319C.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319C authorizes the board to promulgate administrative regulations required to establish conditions for inactive and retired status. This administrative regulation establishes procedures for inactive and retired status.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

(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 regulation.

(b) The necessity of the amendment to this administrative regulation: n/a

(c) How the amendment conforms to the content of the authorizing statutes: n/a

(d) How the amendment will assist in the effective administration of the statutes: n/a

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 11 licensed assistant behavior analysts, 482 licensed behavior analysts, 6 temporary behavior analysts, and 6 temporary registered telehealth providers, should they seek inactive or retired status.

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

amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This regulation provides requirements for obtaining inactive or retired license status, including application and payment of fees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: $100 to obtain retired or inactive status.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation provides instruction as to how to obtain inactive or retired status.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Applied Behavior Analysis Licensing Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increases 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: By reference to the newly amended 201 KAR 43:030, it indirectly provides a $100 fee.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319C.

(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? $100 per applicant for retired or inactive licensure. An unknown number will apply

(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? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 4:091. Buying and selling mounted wildlife specimens.

RELATES TO: KRS 150.010, 150.180, 150.411, 26 U.S.C. 501(c)(3)

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.4111(1), 150.4112, 150.4113

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations establishing requirements for buying, selling, or transporting wildlife. KRS 150.4111 authorizes licensed taxidermists to buy and sell legally taken inedible wildlife parts for the purpose of mounting. KRS 150.4112 authorizes the department to promulgate administrative regulations which allow resident nonprofit 26 U.S.C. 501(c)(3) institutions to sell donated mounted wildlife specimens and to provide a means by which each transaction is recorded for certain wildlife mounts. KRS 150.4113 authorizes the department to promulgate administrative regulations to allow the sale and purchase of mounted wildlife specimens and to provide a means by which each transaction is recorded for certain wildlife mounts. This administrative regulation establishes the requirements for the buying and selling of mounted wildlife specimens.

Section 1. Definitions. (1) "Deer" means Odocoileus virginianus.

(2) "Elk" means Cervus elaphus nelsoni.

(3) "Wild turkey" means Meleagris gallopavo sylvestris.

(4) “Black bear” means Ursus americanus.

(5) “Bobcat” means Lynx rufus.

Section 2. (1) A mounted wildlife specimen purchased from or sold to a licensed taxidermist pursuant to KRS 150.4111 shall be exempt from the requirements of this administrative regulation.

(2) A mounted wildlife specimen may be bought or sold by any person or entity, except as prohibited by federal law.

(3) A nonprofit charitable, religious, or educational institution, which has qualified for exemption pursuant to 26 U.S.C. 501(c)(3) may sell mounted wildlife specimens if the mounts have been donated, except as prohibited by federal law.

(4) Prior to selling a mounted wildlife specimen of a species established in paragraphs (a) through (e) of this subsection, the seller shall first obtain a registration number from the department by completing the online registration process on the department’s Web site at fw.ky.gov for each mounted specimen of:

(a) Black bear;

(b) Bobcat;

(c) Deer;

(d) Elk; or

(e) Wild turkey.

(5) Prior to selling a mounted wildlife specimen of a species established in subsection (4) of this section, the seller shall affix the registration number to the mount in a clear and legible manner.

(6) A department registration number shall be required for each sale of a mounted wildlife specimen established in subsection (4) of this section.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY:

FILED WITH LRC: October 26, 2021 at 2:42 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 24, 2022 at 10:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman’s Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is

received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through January 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the requirements for the buying and selling of mounted wildlife specimens.

(b) The necessity of the administrative regulation: The regulation is necessary to establish rules to allow the sale and purchase of mounted wildlife specimens and to provide a means by which each transaction is recorded for certain wildlife mounts as permitted by KRS 150.4112 and .4113.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.4112 and .4113 provide specific authority to regulate the sale and purchase of mounted wildlife specimens. KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations establishing requirements for buying, selling, or transporting wildlife. KRS 150.4111 authorizes licensed taxidermists to buy and sell legally taken inedible wildlife parts for the purpose of mounting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets out the specific rules for the buying and selling of mounted wildlife specimens as permitted by the statutes.

(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:

(b) The necessity of the amendment to this administrative regulation:

(c) How does the amendment conform to 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 that will be affected: All individuals or entities, except licensed taxidermists, buying or selling mounted wildlife specimens.

(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: There will be a minimal impact upon the entities as they will simply be required to complete paperwork prior to selling certain species of wildlife specimens.

(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: When selling mounted wildlife specimens of the species listed in Section 1, the seller will have to complete an online registration for each specimen and affix the registration number to the specimen prior to selling the specimen.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to comply with this amendment save for the minimal costs associated with printing and affixing the registration numbers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will benefit by the registration process as they will be able to better determine the age of the specimens and the geographic area from which the specimen originated.

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

(a) Initially: There will be no added cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no continuing added cost to implement this administrative regulation.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The Fish and Game Fund.

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

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This regulation does not establish and fees directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all applicable persons or entities are treated 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 Department of Fish and Wildlife Resources.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1)(c), 150.4111(1), 150.4112, and 150.4113

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be minimal expenditures by the Department of Fish & Wildlife Resources and no expenditures for other governmental entities.

(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 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 regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? There will be minimal costs to administer this program for the first year as the electronic registration system is already in place.

(d) How much will it cost to administer this program for subsequent years? There will be minimal costs to administer this program for subsequent years as the registration process is online and generally will not require staff action.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(New Administrative Regulation)

501 KAR 6:290. Southeast State Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to

promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Southeast State Correctional Complex.

Section 1. Incorporation by Reference. (1) "Southeast State Correctional Complex policies and procedures", November 3, 2021, are incorporated by reference. Southeast State Correctional Complex policies and procedures include:

SSCC 01-06-01	Inmate Access to and Communication with SSCC Staff
SSCC 01-07-01	Institutional Tours of SSCC
SSCC 01-08-01	SSCC Cooperation with Outside Agencies Including Courts, Governmental, Legislative, Executive, and Community Agencies
SSCC 01-10-01	Public Information and Media Communication
SSCC 01-11-01	Tobacco Products and Nicotine Procedures
SSCC 02-08-01	Inmate Canteen
SSCC 02-12-01	Inmate Accounts
SSCC 05-02-01	Outside Consultation and Research
SSCC 09-01-01	Inmate Counts
SSCC 09-02-01	Inmate Substance Abuse Testing
SSCC 09-03-01	Inmate Death
SSCC 09-04-01	Construction Crew Entry and Exit Procedures
SSCC 09-05-01	Entry and Exit Procedures
SSCC 10-01-01	Restrictive Housing Unit
SSCC 11-01-01	Food Service General Information & Staff Health Standards
SSCC 11-01-02	Inmate Dining Room
SSCC 11-02-01	Food Service Security
SSCC 11-03-01	Inmate Work Schedule for Food Service
SSCC 11-04-01	Meal Preparation and Service
SSCC 11-04-02	Menu, Nutrition, Special, and Individual Diets
SSCC 12-01-01	Clothing, Bedding, Hygiene Supplies, and Barber Shop
SSCC 12-03-01	Vermin and Insect Control
SSCC 13-02-01	Medical Services Informed Consent, Sick Call, Physician's Clinics, Pill Call, and Medical Co-Payment
SSCC 13-02-02	Emergency Medical Care and Specialized Health Services
SSCC 13-02-03	Continuity of Care: Health Evaluations, Intra-System Transfer, Individual Treatment Plans
SSCC 13-03-01	Use of Pharmaceutical Products
SSCC 13-05-01	Management of Serious and Infectious Diseases
SSCC 13-06-01	Mental Health Services
SSCC 13-07-01	Suicide Prevention and Intervention Program
SSCC 13-08-01	Eye Care
SSCC 13-09-01	Dental Care
SSCC 13-12-01	Inmate Self Administration of Medication
SSCC 13-13-01	Health Education Program and Detoxification
SSCC 13-14-01	COVID-19 Precautions
SSCC 14-02-01	Legal Services Program
SSCC 16-01-01	Inmate Visitation
SSCC 16-02-01	Inmate Mail
SSCC 16-03-01	Inmate Telephone Communications
SSCC 16-04-01	Inmate Packages
SSCC 17-01-01	Personal Property Control
SSCC 17-02-01	SSCC Inmate Receiving and Orientation Process
SSCC 17-03-01	Television Repair Process
SSCC 18-01-01	Inmate Classification
SSCC 18-02-01	Meritorious Housing
SSCC 18-02-02	Meritorious Visitation
SSCC 19-01-01	Inmate Work Program
SSCC 20-01-01	Educational Courses
SSCC 21-01-01	Library Services
SSCC 22-01-01	Recreation Programs
SSCC 22-02-01	Inmate Clubs and Organizations
SSCC 22-03-01	Arts and Crafts Projects
SSCC 23-01-01	Religious Services
SSCC 24-01-01	Social Services and Counseling Program
SSCC 25-01-01	Pre-Release Program
SSCC 25-01-02	Inmate Release Process
SSCC 25-02-01	Parole Hearings
SSCC 26-01-01	Citizen Involvement and Volunteer Service Program

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections website at https://corrections.ky.gov/About /Pages/lrcfilings.aspx.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: October 5, 2021

FILED WITH LRC: November 3, 2021 at 3:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2022 at 9:00 a.m. at Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Southeast State Correctional Complex (SSCC).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 196.035 and 197.020 and meets American Correctional Association (ACA) policy requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Southeast State Correctional Complex including rights and responsibilities of employees and inmates.

(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 SSCC employees and inmates concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: 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 affects approximately 245 employees and 584 inmates at the Southeast State Correctional Complex and all volunteers and visitors to the institution.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the policies and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but is anticipated to be within the funds budgeted to the Department of Corrections for institutional operational costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Corrections budgeted funds for Southeast State Correctional Complex 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 any fee.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Southeast State Correctional Complex

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 28 C.F.R. §115.15, 28 C.F.R. §115.42

(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 create any revenue for the institution.

(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 create any revenue for the institution.

(c) How much will it cost to administer this program for the first year? The regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the institution for the biennium.

(d) How much will it cost to administer this program for subsequent years? The regulation impacts how the institution operates, but is not expected to increase costs from what will be budgeted to the institution.

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
Department of Workforce Investment
Office of Employer and Apprenticeship Services
(New Administrative Regulation)

787 KAR 3:020. Confidentiality of records of the Office of Employer and Apprenticeship Services.

RELATES TO: KRS 151B.280

STATUTORY AUTHORITY: KRS 151B.280(5)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.280(5)(a) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations to protect the confidential nature of all records and reports which directly or indirectly identify a client or former client of programs administered by the cabinet's Office of Employer and Apprenticeship Services. This administrative regulation establishes which records of the Office of Employer and Apprenticeship Services shall be considered confidential in order to encourage full disclosure of information on the part of job applicants and employers and to provide guidelines to employment service personnel in responding to requests for information.

Section 1. The employment and service records identified in this section shall be confidential and shall not be subject to disclosure, except as provided in KRS 151B.280(5)(a) and (b):

(1) Work Opportunity Tax Credit Program:

(a) Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit;

(b) ETA Form 9061, Individual Characteristics Form Work Opportunity Tax Credit;

(c) ETA Form 9063, Employer Certification Work Opportunity Tax Credit;

(d) ETA Form 9175, Long Term Unemployment Recipient Self-Attestation Form, Work Opportunity Tax Credit Program;

(e) Form 2828, Power of Attorney and Declaration of Representative; and

(f) Documents provided by employers in support of their applications for the Work Opportunity Tax Credit that contain "personal information" as that term is defined in KRS 61.931(6) to include Form W-4 and DD Form 214.

(2) Registered Apprenticeship:

(a) Kentucky Registered Apprenticeship Registration, Standards, and Agreement (ETA Form 671, Section 1);

(b) Program Registration and Apprenticeship Agreement, Office of Apprenticeship, Apprentice Registration (ETA Form 671, Section 2);

(c) ETA Form 671, Voluntary Disability Disclosure;

(d) Registered Apprenticeship Standards Occupation Page;

(e) RAPIDS Program Registration Form;

(f) Apprentice "personal information" as that term is defined in KRS 61.931(6) contained in the Commonwealth's Citizen Connect

online portal;

(g) Employer Acceptance Agreement (Registered Apprenticeship Appendix D); and

(h) Additional documents provided by employers relevant to apprenticeship program approval that contain private business information to include Approved Job Description and Related Technical Instruction outlines, Vendor Verifications, Citation Requests, and Occupation Support Letters.

(3) Federal Bonding Program:

(a) Kentucky Federal Bonding Program Requests from employers; and

(b) Kentucky Federal Bonding Program Conditional Pre-Approval Letter.

MARTY HAMMONS, Commissioner

APPROVED BY AGENCY: November 12, 2021

FILED WITH LRC: November 12, 2021 at 12:12 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2022, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, KY. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Michelle DeJohn, Executive Director, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone 502-782-3252, email michelle.dejohn@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michelle DeJohn

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 151B.280(5)(a) requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations to protect the confidential nature of all records and reports which directly or indirectly identify a client or former client of programs administered by the cabinet's Office of Employer and Apprenticeship Services. This administrative regulation establishes which records of the Office of Employer and Apprenticeship Services shall be considered confidential in order to encourage full disclosure of information on the part of job applicants and employers and to provide guidelines to employment service personnel in responding to requests for information.

(b) The necessity of this administrative regulation: The secretary of the Education and Workforce Development Cabinet is required to promulgate this regulation to protect the confidentiality of certain records of the Office of Employer and Apprenticeship Services pursuant to KRS 151B.280(5)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides a detailed list of program related documents in the possession of the Office of Employer and Apprenticeship Services that are deemed confidential pursuant to KRS 151B.280(5)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists in the effective administration of agency programs by identifying the Office of Employer and Apprenticeship Services documents deemed confidential pursuant to KRS 151B.280(5)(a), thereby encouraging full disclosure of information on the part of job applicants and employers who participate in the agency's programs as well as providing guidelines to employment service personnel in responding to requests for information.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 347 businesses and nearly 4,165 apprentices participating in Office of Employer and Apprenticeship Services' Registered Apprenticeship program, and 13,783 applications for the Work Opportunity Tax Credit Program were processed in the previous quarter. Documents related to those businesses and apprentices are covered by this regulation.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No additional actions will have to be taken by businesses or apprentices. This regulation ensures the confidentiality of the documents they already submit to the Office of Employer and Apprenticeship Services in order to participate in the agency's programs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation will not cost businesses or apprentices any additional funds.

(c) As a result of compliance, what benefits will accrue to the entities: By providing a detailed list of Office of Employer and Apprenticeship documents deemed confidential, this regulation encourages full disclosure of information on the part of job applicants and employers.

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

(a) Initially: There is no cost initially to implement this administrative regulation.

(b) On a continuing basis: There is no cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Employer and Apprenticeship Services is funded both by general state funds and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipated increase in fees or funding necessary to implement this regulation. Any increase in costs would be negligible and able to be handled by the current administrative staff.

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

(9) TIERING: Is tiering applied? The regulation will be applied uniformly to Office of Employer and Apprenticeship Services documents and 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 Office of Employer and Apprenticeship Services within the Education and Workforce Development Cabinet's Department of Workforce Investment will be impacted by this regulation as it specifically identifies the agency's documents that are deemed confidential.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 151B.280(5)(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. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for the state for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue will be generated for the state for subsequent years.

(c) How much will it cost to administer this program for the first year? The documents identified as confidential in this regulation are part of existing programs and the regulation will not have any increase in costs.

(d) How much will it cost to administer this program for subsequent years? Any additional costs brought on by this regulation will be negligible and can be absorbed through current staffing levels.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: There is no fiscal impact associated with this amendment.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of November 9, 2021

Call to Order and Roll Call

The November meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 9, 2021 at 1 p.m. in Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken.

Present were:

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senators Julie Raque Adams, Ralph Alvarado, and David Yates; Representatives Randy Bridges, Deanna Frazier, and Mary Lou Marzian.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Cassie Trueblood, Education Professional Standards Board; Michael Adams, Jenni Scutchfield, Secretary of State; Denise Durbin, Bobby Stokes, Heather Wagers, Catherine York, Office of the Attorney General; Bethany Adkins Rice, Richard Bertelson, Jessica Johnston, Jennifer Stosberg, Department of Revenue; Eden Davis, Board of Pharmacy; Dr. Keith Knapp, Kenneth Urlage, Kevin Winstead, Board of Licensure for Long-Term Care Administrators; Jeffrey Allen, Board of Dentistry; Brian Clark, Steve Fields, Rich Storm; Department of Fish and Wildlife Resources; Amy Barker, Jennifer Bogard, Kirstie Willard, Department of Corrections; Todd Allen, Matt Ross, Board of Education; Jeremy Rodgers, John K. Wood, Kentucky Fire Commission; Honor Barker, Scotty McFarlan, Education and Workforce Development Cabinet; Sam Flynn, Dale Hamblin, Robert Walker, Department of Workers' Claims; Ed O'Daniel, Self; Sharon Clark, Abigail Gall, Shaun Orme, Chad Thompson, Department of Insurance; Max Fuller, Mike Haney, David Moore, Rick Rand, Benjamin Siegel, Department of Housing, Buildings and Construction; Kim Minter, Donna Veno, Office of Health Data and Analytics; Laura Begin, Dr. Sarah Vanover, Department for Community Based Services; John Page, Wesley Phelps, Department for Income Support/Disability Determination.

The Administrative Regulation Review Subcommittee met on Tuesday, November 9, 2021, and submits this report:

The subcommittee determined that the following administrative regulation was deficient pursuant to KRS 13A.030(2)(a):

LABOR CABINET: Department of Workers' Claims

803 KAR 25:190. Utilization review – Medical Bill Audit – Medical Director – Appeal of Utilization Review Decisions. Sam Flynn, general counsel; Dale Hamblin, assistant general counsel; and Robert Walker, commissioner, represented the department. Ed O'Daniel, American Property Casualty Insurance Association, appeared in opposition to this administrative regulation

In response to a question by Co-Chair Hale, Mr. Walker stated that this administrative regulation substituted a medical director for the former utilization review reconsideration process, which would streamline and expedite getting medical treatment to injured workers.

In response to a question by Co-Chair West, Mr. O'Daniel stated that this administrative regulation should be found deficient by this subcommittee because it conflicted with the authorizing statute. This administrative regulation required a $200 fee to appeal, while KRS 342.035(5) required payments to come from a special fund. KRS 342.035(8) directed a pharmaceutical formulary and medical necessity guidelines; however, this administrative regulation might violate medical necessity guidelines. KRS 342.035(5)(c) did not authorize a medical director and authorized a different process. This administrative regulation authorized fines, including payment of costs and attorney's fees, for which there was no statutory authority. The existing utilization review process had worked well, while this process would add costs.

In response to a question by Co-Chair Hale, Mr. Walker stated that the fund established by KRS 342.023(5) was for the utilization process itself, not for appeal. Mr. Flynn stated that KRS 342.260 authorized speedy delivery of treatment for injured workers, and KRS 342.035 did not prohibit a medical director.

In response to a question by Co-Chair West, Mr. Walker stated that this administrative regulation had not been further amended after discussions with leadership.

Senator Alvarado stated that the medical director represented a medical panel of one (1) person. Past arguments for medical panels resulted in constitutional concerns. There did not seem to be statutory authority for a medical director, and establishing statutory authority would require a constitutional referendum.

Senator Yates stated that previous constitutional concerns did not seem to apply to this situation because complainants had access to the court systems. This administrative regulation seemed to propose a system that would benefit employers and injured workers.

In response to questions by Co-Chair West, Mr. Walker stated that this was not a major change to this administrative regulation's framework. This change would substitute a medical director for the existing reconsideration process and would represent a financial benefit for employers and employees. The fee for an appeal was $200, which was a savings of approximately $800 to $1,300. This was not adding layers of bureaucracy. The fiscal impact of this administrative regulation was estimated to be $400,000. Co-Chair West stated that some had estimated the fiscal impact to be $1,000,000, and this seemed like a major change. This administrative regulation seemed to be an attempt to change a statutorily established process. Legislators expected more changes to this administrative regulation and expected the department to wait until session before consideration by this subcommittee. There seemed to be statutory conflicts.

In response to a question by Co-Chair Hale, Mr. Hamblin stated that the proposed agency amendment added specificity to medical director qualifications, along with other changes after meeting with stakeholders.

In response to a question by Co-Chair West, Mr. Flynn stated that the department believed this was a good administrative regulation, which would expedite treatment for injured workers. This would reduce costs and did not create more bureaucracy. The department preferred not to further defer this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, 5 through 7, 10 through 14, and 16 through 17 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 13 to change the following criteria that would subject related medical services to a utilization review: (a) total cumulative medical costs are increased from costs that exceed $1,000 to costs that exceed $3,000; and (b) total cumulative lost work days are increased from fifteen (15) days to thirty (30) days; (3) to amend Section 16 to: (a) establish a four (4) year term for the medical director and authorize the medical director to serve more than one (1) term; (b) establish requirements for filling a vacant medical director position; (c) establish provisions for removal of the medical director; and (d) authorize the medical director to seek assistance from physicians with appropriate certification or specialty, if the treatment is outside of the medical director's certification or specialty; (4) to amend Section 17 to: (a) return the appeal period for utilization review decisions to thirty (30) days, instead of forty-five (45) days; (b)

reduce the appeal fee from $400 to $200; (c) increase the amount of time to pay the appeal fee from fifteen (15) to twenty-one (21) calendar days; (d) require the medical director to conduct the appeal in keeping with the treatment guidelines and pharmaceutical formulary created or adopted by the commissioner; (e) require the medical director to consider the opinion of the medical provider whose treatment, recommended treatment, or prescribed medication is being denied; and (f) increase the amount of time to file the "Medical Dispute" form from fourteen (14) to thirty (30) calendar days; and (5) to amend Sections 16 and 17 to make clarifications and comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Co-Chair West made a motion, seconded by Senator Alvarado, to find this administrative regulation deficient. A roll call vote was conducted and, with six (6) votes to find this administrative regulation deficient and two (2) votes against deficiency, this administrative regulation was found deficient.

Senator Alvarado explained his yes vote. While he didn't necessarily disagree with the policy, he stated that these were the same arguments that had been found unconstitutional by the Kentucky Supreme Court.

Representative Marzian explained her no vote. This was an administrative regulation that would provide faster access to care for injured workers.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 19 was added to this administrative regulation to reflect the finding of deficiency.

Administrative Regulations Reviewed by this Subcommittee:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Administrative Certificates

16 KAR 6:010. Assessment prerequisites for teacher certification. Cassie Trueblood, counsel, represented the board.

SECRETARY OF STATE: Address Confidentiality Program

30 KAR 6:011E. Kentucky address confidentiality program. Michael Adams, Secretary of State, and Jennifer Scutchfield, assistant Secretary of State, represented the office.

In response to a question by Co-Chair Hale, Secretary Adams stated that the Address Confidentiality Program protected victims of specific crimes, such as domestic violence, or as granted by court order. This administrative regulation was being amended to revise appeal procedures for consistency with the authorizing statute.

DEPARTMENT OF LAW: Medical Examination of Sexual Abuse Victims

40 KAR 3:020. Protocol for operation of local multidisciplinary teams on child sexual abuse. This administrative regulation was deferred from the November 9 subcommittee meeting. Please see the "deferred or removed" portion of this report near the end of these minutes.

Kentucky Victim and Witness Protection Program

40 KAR 6:010. Kentucky Victim and Witness Protection Program. Denise Durbin, executive director; Bobby Stokes, executive director; Heather Wagers, executive director; and Catherine York, deputy executive director, represented the department.

In response to a question by Co-Chair Hale, Ms. Durbin stated that these administrative regulations were assigned to the department for administrative purposes.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

40 KAR 6:020. Funding assistance from the child victims' trust fund.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

40 KAR 6:030. Human Trafficking Victims Fund.

In response to questions by Co-Chair West, Ms. Durbin stated that this was a new fund that established the application process. The authorizing statute established how the funds were to be used.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Ad Valorem Tax; State Assessment

103 KAR 8:090. Classification of property; public service corporations. Richard Bertelson, staff attorney manager; Jessica Johnston, executive director; Bethany Rice, executive director; and Jennifer Stosberg, staff attorney manager, represented the department.

Income Tax; Corporations

103 KAR 16:270. Apportionment; receipts factor.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:050. Licenses and permits; fees. Eden David, general counsel, represented the board.

201 KAR 2:076. Compounding.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 4, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure for Long-Term Care Administrators

201 KAR 6:020. Other requirements for licensure. Dr. Keith Knapp, member; Kenneth Urlage, chair; and Kevin Winstead, commissioner, represented the board.

In response to a question by Senator Alvarado, Mr. Winstead stated that this administrative regulation was being amended to revise the edition date of material incorporated by reference.

A motion was made and seconded to approve the following amendments: to amend Section 2 and material incorporated by reference to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Dentistry

201 KAR 8:520. Fees and fines. Jeffrey Allen, executive director, represented the board.

In response to questions by Co-Chair Hale, Mr. Allen stated that this administrative regulation was being amended to make technical corrections. Fees were not being increased; however one (1) new fee was established and one (1) was also being removed.

In response to a question by Senator Alvarado, Mr. Allen stated that there was a typographical error regarding a fee amount. The Regulation Compiler was authorized to correct typographical errors and would make the change.

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

301 KAR 2:015. Feeding of wildlife. Steve Fields, staff attorney, and Rich Storm, commissioner, represented the department.

A motion was made and seconded to approve the following amendment: to add a new Section 3 to establish baiting and

feeding requirements for Chronic Wasting Disease Surveillance or Management Zones. Without objection, and with agreement of the agency, the amendment was approved.

301 KAR 2:142. Spring wild turkey hunting.

301 KAR 2:224. Waterfowl hunting zones.

Hunting and Fishing

301 KAR 3:012. Public use of Otter Creek Outdoor Recreation Area.

301 KAR 3:027. Hunting and fishing method exemptions for disabled persons.

301 KAR 3:030. Year-round season for wildlife.

301 KAR 3:110. Mobility-impaired hunts for deer, turkey and waterfowl.

Wildlife

301 KAR 4:050. Swan Lake Unit of Boatwright Wildlife Management Area.

301 KAR 4:070. Scientific and educational collecting permits.

Licensing

301 KAR 6:070. Boat dealers.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Kentucky Parole Board

501 KAR 1:050. Granting final discharge from parole. Amy Barker, assistant general counsel; Jennifer Bogard, program administrator; and Kirstie Willard, director, Local Facilities, represented the department.

In response to questions by Co-Chair West, Ms. Barker stated that the authorizing statute prohibited final discharge without the parolee having made full ordered restitution. Restitution status did not affect parole eligibility, only final discharge.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Class D and Class C Felons

501 KAR 2:020. Definitions for 501 KAR Chapter 2.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, and CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1(6) to define “deaf or hard of hearing inmate” as an inmate who has a hearing loss that qualifies the inmate as an individual with a disability under the Americans with Disabilities Act. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 2:060. Procedures for housing of Class C and D felons.

In response to a question by Co-Chair Hale, Ms. Willard stated that this administrative regulation allowed offenders who had ninety (90) days or less remaining of their sentences to, if they so choose, serve the remainders of the sentences rather than being considered for parole.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8 to clarify that furlough requests shall be: (a) submitted to the classification branch manager; and (b) governed by CPP 25.4, which was incorporated by reference in 501 KAR 6:020; (2) to amend Section 9 to clarify that the jail pays for routine medical care but may charge a copay in accordance with KRS 441.045(13); and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 5 and 7 through 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Jail Standards for Full-service Facilities

501 KAR 3:110. Classification.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:120. Admission; searches and release.

501 KAR 3:130. Prison programs; services.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:150. Hearings, procedures, disposition.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:170. Classifications.

Office of the Secretary

501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, and 5 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:250. Graduated sanctions for technical violations of probation and compliance incentives system.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 4 to include interpersonal protective orders in addition to emergency protective orders and domestic violence orders; (2) to amend Section 3(5) to clarify when discussion with a supervisor is required; and (3) to amend Sections 1 through 4 and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Jail Standards for Restricted Custody Center Facilities

501 KAR 7:040. Personnel.

501 KAR 7:060. Security; control.

501 KAR 7:090. Medical services.

501 KAR 7:100. Food services.

501 KAR 7:110. Classification.

501 KAR 7:120. Admission; searches and release.

501 KAR 7:130. Prisoner programs; services.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 7:140. Prisoner rights.

A motion was made and seconded to approve the following amendment: to amend Section 1(2) to specify that the statement of prisoner rights may also be provided in an electronic format, as required by KRS 441.055(1)(a)2.a. Without objection, and with agreement of the agency, the amendment was approved.

501 KAR 7:150. Training.

A motion was made and seconded to approve the following amendments: to amend Section 2(2)(b) to require training on communicable diseases, in accordance with KRS 441.115(1). Without objection, and with agreement of the agency, the amendments were approved.

Psychiatric or Forensic Psychiatric Facility Victim Notification System

501 KAR 14:010. Psychiatric or Forensic Psychiatric Facility Victim Notification System.

A motion was made and seconded to approve the following amendment: to amend the RELATES TO paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Office of Chief State School Officer

701 KAR 5:160. Selection and Appointment of Non-Voting Kentucky Board of Education Members. Todd Allen, general counsel, and Matt Ross, policy advisor, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

School Terms, Attendance, and Operation

702 KAR 7:150. Home or hospital instruction.

Office of Learning Support Services

704 KAR 7:121. Repeal of 704 KAR 007:120. (Deferred from September)

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEMS: Commission on Fire Protection Personnel Standards and Education

739 KAR 2:060. Certification and qualifications of fire and emergency services instructors. Jeremy Rodgers, director of operations, and John Wood, attorney, represented the commission.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Sections 2 and 5 to resolve inconsistencies and clarify the grandfathering of existing Level III instructors certified on or before January 1, 2022; and (3) to amend Section 3 to reorganize the qualifications for a Level I instructor. Without objection, and with agreement of the agency, the amendments were approved.

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

787 KAR 2:040. Local workforce development area governance. Honor Barker, deputy commissioner, and Scotty McFarlan, staff attorney, represented the department.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:190. Utilization review – Medical Bill Audit – Medical Director – Appeal of Utilization Review Decisions.

This subcommittee found this administrative regulation deficient. Please see the "deficient" portion of this report near the beginning of these minutes.

PUBLIC PROTECTION CABINET: Department of Insurance: Unauthorized Insurers' Prohibitions, Process and Advertising

806 KAR 11:020. Multiple employer welfare arrangements. Sharon Clark, commissioner; Abigail Gall, regulation coordinator; Shaun Orme, executive advisor; and Chad Thompson, general counsel, represented the department.

In response to a question by Co-Chair West, Ms. Clark stated that the $500 filing fee was not new.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 through 4 and 6 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Motor Vehicle Reparations (No-fault)

806 KAR 39:070. Proof of motor vehicle insurance.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Housing, Buildings and Construction: Elevator Safety

815 KAR 4:010. Annual inspection of elevators, chairlifts, fixed guideway systems, and platform lifts. Max Fuller, deputy commissioner; Mike Haney, State Fire Marshal; David Moore, plumbing director; Rick Rand, commissioner; and Benjamin Siegel, general counsel, represented the department.

Co-Chair Hale stated that the commissioner had previously discussed the need for these fee increases.

815 KAR 4:025. Permit and inspection fees for new and altered elevators, chairlifts, fixed guideway systems, and platform lifts.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 4:027. Reporting incidents involving personal injury or death.

Kentucky Building Code

815 KAR 7:080. Licensing of fire protection sprinkler contractors.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 7:110. Criteria for expanded local jurisdiction.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 4 to comply with the

drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Standards of Safety

815 KAR 10:060. Kentucky standards of safety.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 5 and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 10:070. Consumer fireworks retailer registration and fees.

Plumbing

815 KAR 20:050. Installation permits.

815 KAR 20:195. Medical gas piping installations.

Hazardous Materials

815 KAR 30:010. LP gas license; financial responsibility required.

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Telehealth Services: Telehealth

900 KAR 12:005E. Telehealth terminology and requirements. Kim Minter, staff assistant, and Donna Veno, division director, represented the office.

In response to questions by Senator Alvarado, Ms. Veno stated that this administrative regulation was filed as an emergency because the glossary of telehealth terminology was required to be used in the fall health plans. The office agreed to submit more information regarding the nature of the emergency.

In response to questions by Co-Chair West, Ms. Veno stated that confidentiality requirements also applied in telehealth situations, including to the Department for Public Health.

Department for Community Based Services: Division of Child Care: Day Care

922 KAR 2:160. Child Care Assistance Program. Laura Begin, staff assistant, represented the division.

Department of Disability Determination Services: Disability Determination

923 KAR 2:470. Disability Determinations Program. John Paige, assistant director, and Wesley Phelps, branch manager, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the November 9, 2021, subcommittee agenda:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Council on Postsecondary Education: Adult Education and Literacy

13 KAR 3:010. GED Testing Program.

13 KAR 3:020. Provision of instruction for individuals sentenced by a court to participate in educational programs.

13 KAR 3:030. Qualifications for progressing satisfactorily through a GED preparation program.

13 KAR 3:040. GED Incentives Program.

13 KAR 3:050. GED eligibility requirements.

13 KAR 3:060. High school equivalency diploma awarded for credit hour completion at Kentucky Community and Technical College Systems institutions.

STATE BOARD OF ELECTIONS: Statewide Voter Registration

31 KAR 3:010. Current address of Kentucky registered voters and distribution of voter registration lists.

Forms and Procedures

31 KAR 4:195E. Consolidation of precincts and precinct election officers.

31 KAR 4:195. Consolidation of precincts and precinct election officers.

31 KAR 4:200E. Chain of custody for records during an election contest.

31 KAR 4:200. Chain of custody for records during an election contest.

Voting

31 KAR 5:025E. Ballot standards and election security.

31 KAR 5:025. Ballot standards and election security.

DEPARTMENT OF LAW: Medical Examination of Sexual Abuse Victims

40 KAR 3:020. Protocol for operation of local multidisciplinary teams on child sexual abuse.

PERSONNEL CABINET: Personnel Board, Classified

101 KAR 2:210E. 2022 Plan Year Handbook for the Public Employee Health Insurance Program.

Kentucky Retirement Systems: General Rules

105 KAR 1:210. Disability procedures.

105 KAR 1:310. Fred Capps Memorial Act.

General Rules

105 KAR 1:330. Purchase of service credit.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:430. Emergency orders and hearings.

Board of Embalmers and Funeral Directors

201 KAR 15:030E. Fees.

201 KAR 15:030. Fees.

201 KAR 15:040. Examination.

201 KAR 15:050. Apprenticeship and supervision requirements.

201 KAR 15:110. Funeral establishment criteria.

201 KAR 15:125. Surface transportation permit.

Board of Nursing

201 KAR 20:215. Continuing competency requirements.

201 KAR 20:320. Standards for curriculum of prelicensure

registered nurse and practical nurse programs.

201 KAR 20:471. Repeal of 201 KAR 020:470.

201 KAR 20:472. Initial approval for dialysis technician training programs.

201 KAR 20:474. Continuing approval and periodic evaluation of dialysis technician training programs.

201 KAR 20:476. Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement.

201 KAR 20:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game
301 KAR 2:082. Transportation and holding of live exotic wildlife.

Hunting and Fishing
301 KAR 3:010. Public use of Wildlife Management Areas.

301 KAR 3:026. Access to Wildlife Management Areas for mobility-impaired individuals.

Wildlife
301 KAR 4:001. Selection of Fish and Wildlife Resources Commission nominees.

301 KAR 4:010. Districts.

301 KAR 4:020. Ballard Wildlife Management Area restrictions.

301 KAR 4:100. Peabody Wildlife Management Area use requirements and restrictions.

301 KAR 4:110. Administration of drugs to wildlife.

Licensing
301 KAR 5:001. Definitions for 301 KAR Chapter 5.

301 KAR 5:030. Purchasing licenses and permits.

301 KAR 5:100. Interstate Wildlife Violators Compact.

Water Patrol
301 KAR 6:001. Definitions for 301 KAR Chapter 6.

Kentucky State Fair Board: Fairgrounds and Exhibition Center
303 KAR 1:005. Vehicle speed.

303 KAR 1:010. Vehicle parking.

303 KAR 1:015. Traffic flow.

303 KAR 1:075. Conduct and operation of concessions and exhibits.

303 KAR 1:080. Exposition Center, grounds; dissemination of material; demonstrations.

303 KAR 1:090. Exhibition Center, dissemination of material; demonstrations.

303 KAR 1:100. Exposition Center, grounds; sales and dissemination of real property, fixtures ad goods, solicitation of contribution or sales during annual State Fair; rental of space; use of sound amplification equipment.

303 KAR 1:110. Procurement procedures.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Criminal Justice Training: Kentucky Law Enforcement Council
503 KAR 1:060. Definitions for 503 KAR Chapter 1.

503 KAR 1:080. Certification of schools.

503 KAR 1:090. Approval of course curriculums.

503 KAR 1:100. Certification of instructors.

503 KAR 1:110. Department of Criminal Justice Training Basic training: graduation requirements; records.

503 KAR 1:120. Professional development in-service training: training requirements; recognized courses; records.

503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards.

503 KAR 1:170. Career Development Program.

TRANSPORTATION CABINET: Department of Highways: Traffic
603 KAR 5:360. Transportation Cabinet use of interstate and parkway signs to locate missing persons.

TRANSPORTATION CABINET: Department of Highways: Billboards
603 KAR 10:011E. Repeal of 603 KAR 010:002, 010:010, and 010:021.

603 KAR 10:040E. Advertising devices.

603 KAR 10:040. Advertising devices.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: General Administration
702 KAR 1:191E. District employee quarantine leave.

702 KAR 1:191. District employee quarantine leave.

School Terms, Attendance, and Operation
702 KAR 7:125. Pupil attendance.

702 KAR 7:125E. Pupil attendance.

Department for Libraries and Archives: Archives
725 KAR 1:010. Records officers; duties.

725 KAR 1:020. Recording and reproducing public records.

725 KAR 1:025. Transfer of public records.

725 KAR 1:030. Scheduling public records for retention and disposal; procedures.

725 KAR 1:040. Collection and distribution of reports and publications.

725 KAR 1:050. Records management program.

725 KAR 1:061. Records retention schedules; authorized schedules.

Libraries
725 KAR 2:015. Public library facilities construction.

725 KAR 2:080. Interstate Library Compact.

Department of Workforce Investment: Office of Vocational Rehabilitation
781 KAR 1:010. Office of Vocational Rehabilitation appeal

procedures.

781 KAR 1:020. General provisions for operation of the Office of Vocational Rehabilitation.

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

781 KAR 1:040. Rehabilitation technology services.

781 KAR 1:050. Carl D. Perkins Vocational Training Center.

Office for the Blind
782 KAR 1:010. Kentucky Business Enterprises.

782 KAR 1:070. Certified driver training program.

Kentucky Commission on Proprietary Education
791 KAR 1:010. Applications, permits, and renewals.

791 KAR 1:020. Standards for licensure.

791 KAR 1:025. Fees.

791 KAR 1:027. School record keeping requirements.

791 KAR 1:030. Procedures for hearings.

791 KAR 1:035. Student protection fund.

791 KAR 1:040. Commercial driver license training school curriculum and refresher course.

791 KAR 1:050. Application for license for commercial driver license training school.

791 KAR 1:060. Application for renewal of license for commercial driver license training school.

791 KAR 1:070. Commercial driver license training school instructor and agency application and renewal procedures.

791 KAR 1:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver license training schools.

791 KAR 1:100. Standards for Kentucky resident commercial driver training school facilities.

791 KAR 1:150. Bond requirements for agents and schools.

791 KAR 1:155. School closing process.

791 KAR 1:160. Transfer of ownership, change of location, change of name, revision of existing programs.

LABOR CABINET: Department of Workplace Standards: Labor Standards; Wages and Hours
803 KAR 1:005. Employer-employee relationship.

803 KAR 1:025. Equal pay provisions, meaning and application.

803 KAR 1:060. Overtime pay requirements.

803 KAR 1:063. Trading time.

803 KAR 1:065. Hours worked.

803 KAR 1:066. Recordkeeping requirements.

803 KAR 1:070. Executive, administrative, supervisory or professional employees; salesmen.

803 KAR 1:075. Exclusions from minimum wage and overtime.

803 KAR 1:080. Board, lodging, gratuities and other allowances.

803 KAR 1:090. Workers with disabilities and work activity centers' employee's wages.

Occupational Safety and Health
803 KAR 2:330E. Occupational exposure to COVID-19.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts
806 KAR 17:350. Life insurance and managed care.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Telehealth Services: Telehealth
900 KAR 12:005. Telehealth terminology and requirements.

Department for Public Health: Sanitation
902 KAR 10:120. Kentucky public swimming and bathing facilities.

902 KAR 10:190. Splash pads operated by local governments.

Department for Medicaid Services: Hospital Services Coverage and Reimbursement
907 KAR 10:815. Per Diem inpatient hospital reimbursement.

Outpatient Pharmacy Program
907 KAR 23:020. Reimbursement for outpatient drugs.

The subcommittee adjourned at 2:35 p.m. The next meeting of this subcommittee was tentatively scheduled for December 9, 2021, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND FAMILY SERVICES
Meeting of October 20, 2021

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of October 20, 2021, having been referred to the Committee on September 1, 2021 and October 6, 2021, pursuant to KRS 13A.290(6):

September 1, 2021
201 KAR 009:290 Proposed

October 6, 2021
201 KAR 002:270 Proposed
201 KAR 002:360 Proposed
201 KAR 002:420 Proposed
201 KAR 009:270 Proposed
907 KAR 003:005 Proposed
907 KAR 003:010 Proposed
907 KAR 003:060 Proposed
921 KAR 001:020 Proposed
921 KAR 001:390 Proposed
921 KAR 001:400 Emergency
921 KAR 002:015 Emergency
921 KAR 003:027 Proposed
921 KAR 004:116 Emergency

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 20, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY
Meeting of November 17, 2021

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 20, 2021 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

none

The Interim Joint Committee on Natural Resources and Energy met on 11/17/21 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on 10/6/21, pursuant to KRS 13A.290(6):

301 KAR 001:012
301 KAR 001:016
301 KAR 001:018
301 KAR 001:019
301 KAR 001:031
301 KAR 001:050
301 KAR 001:082
301 KAR 001:120
301 KAR 001:125
301 KAR 001:140
301 KAR 001:152
301 KAR 001:210
301 KAR 002:041
301 KAR 002:050
301 KAR 002:084
301 KAR 002:111
301 KAR 002:230
301 KAR 002:260

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 48th year of the *Administrative Register of Kentucky*, from July 2021 through June 2022.

Locator Index - Effective Dates **F - 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 "47 Ky.R." or "48 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.

ALSO NOTE: 2021 legislation may affect the expiration date of some regulations. Generally, the expiration dates listed in this index are based on KRS Chapter 13A provisions.

KRS Index **F - 16**

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 **F - 31**

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index **F - 32**

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 **F - 33**

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

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 48. 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 46 Ky.R. or 47 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.

NOTE: Pursuant to KRS 13A.190, 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 2021 Regular Session legislation, including: House Joint Resolution 77; KRS Chapter 39A, as amended by Senate Bill 1; and by KRS Chapters 13A and 214, as amended by Senate Bill 2.

EMERGENCY ADMINISTRATIVE REGULATIONS

Regulation Number	Ky.R. Page No.	Effective Date
016 KAR 002:220E	48 Ky.R. 253	6-25-2021
016 KAR 002:230E	48 Ky.R. 255	6-25-2021
030 KAR 005:011E	48 Ky.R. 1703	10-29-2021
030 KAR 005:021E	48 Ky.R. 1704	10-29-2021
030 KAR 005:031E	48 Ky.R. 1706	10-29-2021
030 KAR 005:041E	48 Ky.R. 1708	10-29-2021
030 KAR 005:051E	48 Ky.R. 1710	10-29-2021
030 KAR 005:060E	48 Ky.R. 1711	10-29-2021
030 KAR 006:011E	48 Ky.R. 1093	9-15-2021
031 KAR 004:195E	48 Ky.R. 256	6-23-2021
031 KAR 004:200E	48 Ky.R. 258	6-23-2021
031 KAR 005:025E	48 Ky.R. 259	6-23-2021
040 KAR 001:040E	48 Ky.R. 262	6-28-2021
101 KAR 002:095E	47 Ky.R. 172	1-29-2021
As Amended	2534	5-11-2021
Replaced	2573	8-31-2021
101 KAR 002:210E	48 Ky.R. 1095	9-15-2021
200 KAR 002:006E	47 Ky.R. 1730	1-29-2021
Replaced	1811	8-31-2021
200 KAR 003:020E	48 Ky.R. 263	7-1-2021
Impacted by 2021 legislation		
200 KAR 008:505E	47 Ky.R. 1735	1-27-2021
Impacted by 2021 legislation		
200 KAR 017:110E	48 Ky.R. 5	6-2-2021
201 KAR 002:410E	47 Ky.R. 1343	11-23-2020
As Amended	1871	2-22-2021
Withdrawn		8-10-2021
201 KAR 002:411E	48 Ky.R. 734	8-10-2021
Withdrawn		10-11-2021
201 KAR 002:412E	48 Ky.R. 1466	10-11-2021
As Amended	1098	9-14-2021
201 KAR 002:411E	48 Ky.R. 734	8-10-2021
201 KAR 012:082E	48 Ky.R. 1468	10-1-2021
201 KAR 015:030E	48 Ky.R. 268	6-30-2021
201 KAR 015:040E	48 Ky.R. 270	6-30-2021
201 KAR 015:050E	48 Ky.R. 272	6-30-2021
201 KAR 015:110E	48 Ky.R. 276	6-30-2021
201 KAR 015:125E	48 Ky.R. 279	6-30-2021
201 KAR 035:010E	47 Ky.R. 1872	3-5-2021
Am Comments	2536	5-13-2021
As Amended	48 Ky.R. 15	6-8-2021
Replaced	334	8-26-2021
201 KAR 035:020E	47 Ky.R. 1874	3-5-2021
Am Comments	2538	5-13-2021
As Amended	48 Ky.R. 16	6-8-2021
Replaced	68	8-26-2021
201 KAR 035:025E	47 Ky.R. 1878	3-5-2021
Am Comments	2542	5-13-2021
Replaced	338	8-26-2021
201 KAR 035:040E	47 Ky.R. 1880	3-5-2021
Am Comments	2544	5-13-2021
Replaced	340	8-26-2021
201 KAR 035:050E	47 Ky.R. 1884	3-5-2021
Am Comments	2547	5-13-2021
Replaced	341	8-26-2021
201 KAR 035:055E	47 Ky.R. 1886	3-5-2021
Replaced	48 Ky.R. 341	8-26-2021
201 KAR 035:070E	47 Ky.R. 1889	3-5-2021
Am Comments	2550	5-13-2021
Replaced	342	8-26-2021
201 KAR 035:075E	47 Ky.R. 1893	3-5-2021
Am Comments	2554	5-13-2021
Replaced	345	8-26-2021
201 KAR 035:080E	47 Ky.R. 1895	3-5-2021
Am Comments	2556	5-13-2021
Replaced	346	8-26-2021
301 KAR 002:221E	47 Ky.R. 1184	10-30-2020
Replaced	1937	6-3-2021
501 KAR 006:080E	47 Ky.R. 1186	11-2-2020
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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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	503 KAR 001:100
	503 KAR 001:110
	503 KAR 001:120
	503 KAR 001:140
	503 KAR 001:170
15.334	503 KAR 001:060
15.335	503 KAR 001:060
15.340	503 KAR 001:060
	503 KAR 003:030
15.350	503 KAR 001:060
15.360	503 KAR 001:060
15.367	503 KAR 001:060
15.380	503 KAR 001:060
	503 KAR 001:140
15.382	503 KAR 001:060
	503 KAR 001:140
15.383	502 KAR 013:010
15.384	503 KAR 001:060
	503 KAR 001:140
15.386	503 KAR 001:060
	503 KAR 001:110
15.388	503 KAR 001:060
15.390	503 KAR 001:060
15.391	503 KAR 001:060

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15.392	503 KAR 001:060
	503 KAR 001:140
15.394	503 KAR 001:060
	503 KAR 001:140
15.396	503 KAR 001:060
	503 KAR 001:140
15.3971	503 KAR 001:060
	503 KAR 001:140
15.3973	503 KAR 001:060
15.3975	503 KAR 001:060
15.3977	503 KAR 001:060
15.3979	503 KAR 001:060
15.398	503 KAR 001:060
15.400	503 KAR 001:060
	503 KAR 001:140
15.402	503 KAR 001:060
15.404	503 KAR 001:060
	503 KAR 001:110
	503 KAR 001:120
15.410	503 KAR 005:080
15.430	503 KAR 001:060
15.440	503 KAR 001:090
	503 KAR 001:110
	503 KAR 001:440
	503 KAR 001:140
	503 KAR 003:020
15.450	503 KAR 001:060
15.460	503 KAR 005:100
15.470	503 KAR 005:100
15.490	503 KAR 005:100
15.500	503 KAR 005:100
15.510	503 KAR 005:080
15.530	503 KAR 003:050
15.540	502 KAR 030:060
	503 KAR 001:140
15.550	503 KAR 003:050
15.560	503 KAR 003:050
15.565	503 KAR 001:140
	503 KAR 003:050
15.580	503 KAR 001:140
15.900	040 KAR 006:020
15.920	040 KAR 006:020
15.935	040 KAR 006:020
15A.070	503 KAR 003:020
15A.160	502 KAR 012:010
	502 KAR 030:010
16.040	502 KAR 045:005
	502 KAR 045:015
	502 KAR 045:035
	502 KAR 045:085
	502 KAR 045:150
16.050	502 KAR 045:005
	502 KAR 045:015
	502 KAR 045:035
	502 KAR 045:045
	502 KAR 045:075
	502 KAR 045:105
	502 KAR 045:115
16.060	502 KAR 040:010
16.080	502 KAR 045:015
	502 KAR 045:035
	502 KAR 045:045
16.132	502 KAR 012:010
16.140	502 KAR 050:010
16.505-16.652	105 KAR 001:210
16.545	105 KAR 001:330
16.645	105 KAR 001:330
	105 KAR 001:310
17.110	502 KAR 030:020
	502 KAR 040:010
17.115	502 KAR 030:020

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	502 KAR 030:060
17.140	502 KAR 030:010
	502 KAR 030:050
	502 KAR 030:060
	502 KAR 030:070
17.147	502 KAR 030:060
17.150	502 KAR 030:030
	502 KAR 030:070
17.151	502 KAR 030:060
17.152	502 KAR 030:060
17.160	502 KAR 030:060
17.167	502 KAR 030:060
17.180	502 KAR 014:010
17.450	502 KAR 035:010
	502 KAR 035:020
	502 KAR 035:030
	502 KAR 035:040
	502 KAR 035:050
17.460	502 KAR 035:010
	502 KAR 035:020
	502 KAR 035:030
	502 KAR 035:040
	502 KAR 035:050
17.500-17.540	502 KAR 031:020
17.550-17.991	501 KAR 006:190
18A.005	101 KAR 001:325
18A.020	101 KAR 001:345
18A.030	101 KAR 002:210E
	101 KAR 002:210
18A.075	101 KAR 001:335
	101 KAR 001:345
	101 KAR 001:365
	101 KAR 001:367
	101 KAR 001:375
	101 KAR 001:400
18A.0751	101 KAR 001:325
	101 KAR 001:335
	101 KAR 001:345
	101 KAR 001:365
	101 KAR 001:367
	101 KAR 001:375
	101 KAR 001:400
18A.095	101 KAR 001:345
	101 KAR 001:365
	101 KAR 001:367
18A.111	101 KAR 001:325
18A.115	101 KAR 001:400
18A.225	101 KAR 002:210E
	101 KAR 002:210
18A.2254	101 KAR 002:210E
	101 KAR 002:210
36.450	201 KAR 006:040
39A.180	201 KAR 002:411E
	201 KAR 002:412E
39A.350-39A.366	902 KAR 002:230E
39F.180	603 KAR 005:360
39F.200	603 KAR 005:360
41.400	040 KAR 006:020
42.019	200 KAR 003:020E
	200 KAR 003:020
42.425	200 KAR 003:020E
	200 KAR 003:020
45.031	200 KAR 017:110E
	200 KAR 017:110
45.237-45.241	922 KAR 001:565
45.357	921 KAR 004:116E
	921 KAR 004:116
45A	603 KAR 004:035
	910 KAR 001:190
	921 KAR 001:020
49	502 KAR 012:010
56.010	200 KAR 003:020E
	200 KAR 003:020
56.463	200 KAR 003:020E

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	200 KAR 003:020
61.365	502 KAR 013:010
61.371-61.379	101 KAR 001:395
61.505	105 KAR 001:330
61.505-61.705	105 KAR 001:210
	105 KAR 001:310
61.543	105 KAR 001:330
61.552	105 KAR 001:330
61.592	105 KAR 001:330
61.685	105 KAR 001:330
61.805-61.850	702 KAR 007:065
61.870	725 KAR 001:020
61.870-61.884	302 KAR 050:021
	302 KAR 050:031
	782 KAR 001:010
	791 KAR 001:155
61.872	502 KAR 030:070
61.876	040 KAR 001:040E
	040 KAR 001:040
61.878	502 KAR 030:070
	725 KAR 001:025
	791 KAR 001:155
61.884	502 KAR 030:070
67A	815 KAR 007:110
67C	815 KAR 007:110
72.020	502 KAR 012:010
72.025	501 KAR 007:090
72.210-72.280	500 KAR 012:010
75.400	739 KAR 002:060
78.510-78.852	105 KAR 001:210
	105 KAR 001:310
78.545	105 KAR 001:330
78.5520	105 KAR 001:330
78.610	105 KAR 001:330
82.105	815 KAR 007:110
83	815 KAR 007:110
83A	815 KAR 007:110
95.010	739 KAR 002:060
95A.040	739 KAR 002:060
95A.210	739 KAR 002:060
117.001	031 KAR 005:025E
	031 KAR 005:025
117.015	031 KAR 004:195
117.066	031 KAR 004:195E
117.085	031 KAR 005:025E
	031 KAR 005:025
117.086	031 KAR 005:025E
	031 KAR 005:025
117.087	031 KAR 005:025E
	031 KAR 005:025
117.145	031 KAR 005:025E
	031 KAR 005:025
117.225	031 KAR 005:025E
	031 KAR 005:025
117.228	031 KAR 005:025E
	031 KAR 005:025
120.205	031 KAR 004:200E
	031 KAR 004:200
120.215	031 KAR 004:200E
131.130	103 KAR 016:352
	103 KAR 018:090
131.570	787 KAR 001:110
136.120	103 KAR 008:090
	103 KAR 008:090
139.010	103 KAR 027:050
	103 KAR 027:150
	103 KAR 027:230
	103 KAR 030:091
	103 KAR 030:120
	103 KAR 030:140
	103 KAR 030:190
	103 KAR 030:250
139.105	103 KAR 027:050
	103 KAR 030:190

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139.200	103 KAR 027:050
	103 KAR 027:150
	103 KAR 027:230
	103 KAR 030:250
139.215	103 KAR 027:150
	103 KAR 027:230
139.240	103 KAR 027:230
139.250	103 KAR 027:230
139.260	103 KAR 027:150
	103 KAR 027:230
	103 KAR 030:091
	103 KAR 030:190
	103 KAR 030:250
139.270	103 KAR 027:150
	103 KAR 027:230
	103 KAR 030:250
139.280	103 KAR 027:150
	103 KAR 027:230
	103 KAR 030:250
139.290	103 KAR 027:150
	103 KAR 027:230
	103 KAR 030:250
139.310	103 KAR 027:050
	103 KAR 027:150
	103 KAR 027:230
	103 KAR 030:250
139.330	103 KAR 027:050
	103 KAR 027:150
	103 KAR 027:230
	103 KAR 030:250
139.340	103 KAR 030:190
139.470	103 KAR 027:230
	103 KAR 030:091
	103 KAR 030:190
	103 KAR 030:250
139.480	103 KAR 027:230
	103 KAR 030:091
	103 KAR 030:120
	103 KAR 030:140
	103 KAR 030:250
139.486	103 KAR 030:190
139.531	810 KAR 005:030
141.010	103 KAR 016:270
	103 KAR 016:352
141.0101	103 KAR 016:352
141.012	103 KAR 016:352
141.039	103 KAR 016:320
	103 KAR 016:352
141.040	103 KAR 016:270
	103 KAR 016:352
141.044	103 KAR 016:352
141.050	103 KAR 016:320
	103 KAR 018:090
141.120	103 KAR 016:270
	103 KAR 016:352
141.121	103 KAR 016:270
141.160	103 KAR 016:352
141.170	103 KAR 016:352
141.206	103 KAR 016:270
	103 KAR 016:352
141.210	103 KAR 016:352
141.310	103 KAR 018:090
141.315	103 KAR 018:090
141.325	103 KAR 018:090
141.330	103 KAR 018:020
141.355	103 KAR 018:020
141.420	725 KAR 001:020
141.990	103 KAR 016:352
142.303	907 KAR 010:830
150.010	301 KAR 001:050
	301 KAR 001:125
	301 KAR 001:140
	301 KAR 001:152
	301 KAR 001:120

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	301 KAR 001:410
	301 KAR 002:041
	301 KAR 002:050
	301 KAR 002:082
	301 KAR 002:224
	301 KAR 003:012
	301 KAR 003:030
	301 KAR 004:010
	301 KAR 004:020
	301 KAR 004:050
	301 KAR 004:070
	301 KAR 004:091
150.015	301 KAR 002:015
	301 KAR 002:082
	301 KAR 002:260
	301 KAR 004:050
150.022	301 KAR 004:001
	301 KAR 004:010
150.023	301 KAR 004:001
150.025	301 KAR 001:019
	301 KAR 001:031
	301 KAR 002:050
	301 KAR 002:111
	301 KAR 002:224
	301 KAR 002:230
	301 KAR 003:010
	301 KAR 003:026
	301 KAR 003:030
	301 KAR 004:010
	301 KAR 004:020
	301 KAR 004:110
150.090	301 KAR 001:012
	301 KAR 001:016
	301 KAR 001:031
	301 KAR 005:030
150.105	301 KAR 002:260
150.170	301 KAR 001:031
	301 KAR 001:050
	301 KAR 001:125
	301 KAR 001:152
	301 KAR 001:410
	301 KAR 002:041
	301 KAR 002:050
	301 KAR 002:111
	301 KAR 002:230
	301 KAR 002:260
	301 KAR 003:026
	301 KAR 003:110
	301 KAR 005:030
	301 KAR 004:070
150.175	301 KAR 001:031
	301 KAR 001:050
	301 KAR 001:082
	301 KAR 001:120
	301 KAR 001:152
	301 KAR 001:410
	301 KAR 002:142
	301 KAR 002:230
	301 KAR 002:260
	301 KAR 003:026
	301 KAR 003:110
	301 KAR 005:030
150.180	301 KAR 002:041
	301 KAR 004:070
	301 KAR 004:091
150.183	301 KAR 002:082
150.186	301 KAR 002:082
150.190	301 KAR 001:120
150.195	301 KAR 002:082
	301 KAR 004:070
	301 KAR 005:001
	301 KAR 005:030
150.235	301 KAR 001:120
	301 KAR 001:125

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	301 KAR 001:410
	301 KAR 002:082
	301 KAR 002:260
	301 KAR 005:030
150.236	301 KAR 005:100
150.240	301 KAR 003:012
150.250	301 KAR 001:031
	301 KAR 002:050
	301 KAR 004:100
150.280	301 KAR 002:041
	301 KAR 002:084
150.290	301 KAR 002:084
150.300	301 KAR 004:020
150.305	301 KAR 002:142
	301 KAR 002:224
150.320	301 KAR 002:082
150.330	301 KAR 002:082
	301 KAR 002:224
	301 KAR 002:230
	301 KAR 002:260
150.340	301 KAR 001:031
	301 KAR 001:050
	301 KAR 002:224
	301 KAR 002:260
150.360	301 KAR 001:031
	301 KAR 001:082
	301 KAR 002:050
	301 KAR 003:027
	301 KAR 003:030
	301 KAR 003:110
150.362	301 KAR 003:110
150.365	301 KAR 003:110
150.370	301 KAR 001:031
	301 KAR 002:111
	301 KAR 003:030
	301 KAR 003:110
150.390	301 KAR 002:111
	301 KAR 003:027
	301 KAR 003:110
150.411	301 KAR 004:091
150.445	301 KAR 001:152
	301 KAR 001:410
150.450	301 KAR 001:140
	301 KAR 001:152
150.470	301 KAR 001:031
150.485	301 KAR 001:120
	301 KAR 001:125
150.600	301 KAR 002:224
	301 KAR 002:260
	301 KAR 004:020
	301 KAR 004:050
150.620	301 KAR 001:012
	301 KAR 001:018
	301 KAR 001:019
	301 KAR 001:050
	301 KAR 001:410
	301 KAR 003:010
	301 KAR 003:012
	301 KAR 003:026
	301 KAR 003:027
	301 KAR 004:100
150.625	301 KAR 001:012
	301 KAR 001:016
	301 KAR 001:019
150.630	301 KAR 002:041
	301 KAR 002:260
150.640	301 KAR 001:012
	301 KAR 001:016
	301 KAR 001:019
	301 KAR 002:050
	301 KAR 003:010
	301 KAR 003:012
150.680	301 KAR 002:050
150.990	301 KAR 001:050

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	301 KAR 001:152
	301 KAR 001:410
	301 KAR 002:041
	301 KAR 002:142
	301 KAR 002:082
	301 KAR 002:224
	301 KAR 002:260
	301 KAR 003:012
	301 KAR 003:030
	301 KAR 003:110
	301 KAR 004:070
	301 KAR 004:100
	301 KAR 005:030
151.601	200 KAR 017:110E
	200 KAR 017:110
151.605	200 KAR 017:110E
	200 KAR 017:110
151B.020	787 KAR 002:040
151B.185	781 KAR 001:020
151B.190	781 KAR 001:010
	781 KAR 001:020
	781 KAR 001:030
	781 KAR 001:040
	781 KAR 001:050
151B.200	781 KAR 001:010
	781 KAR 001:020
151B.280	787 KAR 003:020
151B.402	013 KAR 003:040
151B.403	013 KAR 003:010
	013 KAR 003:030
	013 KAR 003:050
	013 KAR 003:060
151B.408	013 KAR 003:020
	013 KAR 003:030
	013 KAR 003:040
	013 KAR 003:060
154A.060	202 KAR 003:020
154A.120	202 KAR 003:020
156.029	701 KAR 005:160
156.070	702 KAR 001:191E
	702 KAR 001:195E
	702 KAR 007:065
156.160	702 KAR 001:191E
	701 KAR 001:191
156.496	922 KAR 001:565
157.200	016 KAR 004:020
157.250	016 KAR 004:020
157.3175	016 KAR 002:040
157.320	702 KAR 007:125E
	702 KAR 007:125
157.350	702 KAR 007:125E
	702 KAR 007:125
157.360	702 KAR 007:125E
	702 KAR 007:125
158.030	702 KAR 007:125E
	702 KAR 007:125
158.070	702 KAR 007:125E
	702 KAR 007:125
158.100	702 KAR 007:125E
	702 KAR 007:125
158.135	013 KAR 003:050
158.143	013 KAR 003:050
158.160	902 KAR 002:221E
158.240	702 KAR 007:125E
	702 KAR 007:125
158.6645	013 KAR 003:050
159.010	702 KAR 007:125E
	702 KAR 007:125
159.030	702 KAR 007:125E
	702 KAR 007:125
	704 KAR 007:121
159.035	702 KAR 007:125E
	702 KAR 007:125
159.140	702 KAR 007:125E

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	702 KAR 007:125
159.170	702 KAR 007:125E
	702 KAR 007:125
160.290	702 KAR 001:191E
	702 KAR 001:191
	702 KAR 007:150
	704 KAR 007:121
160.380	016 KAR 001:030
	702 KAR 007:065
160.445	702 KAR 007:065
160.613	103 KAR 030:140
161.010-161.100	016 KAR 001:030
161.011	013 KAR 003:030
161.020	016 KAR 002:040
	016 KAR 002:050
	016 KAR 002:180
	016 KAR 002:220E
	016 KAR 002:220
	016 KAR 002:230E
	016 KAR 002:230
	016 KAR 002:180
	016 KAR 003:070
	016 KAR 004:020
	016 KAR 004:050
	016 KAR 005:010
	016 KAR 006:010
161.028	016 KAR 002:050
	016 KAR 002:220E
	016 KAR 002:220
	016 KAR 002:230E
	016 KAR 002:230
	016 KAR 003:070
	016 KAR 004:020
	016 KAR 004:050
	016 KAR 005:010
	016 KAR 006:010
161.030	016 KAR 002:040
	016 KAR 002:050
	016 KAR 002:180
	016 KAR 002:220E
	016 KAR 002:220
	016 KAR 002:230E
	016 KAR 002:230
	016 KAR 003:070
	016 KAR 004:020
	016 KAR 004:050
	016 KAR 005:010
	016 KAR 006:010
161.053	016 KAR 002:050
161.120	016 KAR 001:030
161.1211	016 KAR 002:180
161.155	702 KAR 001:191
161.200	702 KAR 007:125E
	702 KAR 007:125
163.470	782 KAR 001:010
164.518	011 KAR 016:001
	011 KAR 016:010
164.740	011 KAR 016:001
164.945	016 KAR 005:010
164.946	016 KAR 005:010
164.947	016 KAR 005:010
164A.575	745 KAR 001:035
165A.310	502 KAR 010:035
	791 KAR 001:020
	791 KAR 001:070
165A.330	791 KAR 001:010
	791 KAR 001:020
	791 KAR 001:040
	791 KAR 001:050
	791 KAR 001:060
	791 KAR 001:070
	791 KAR 001:080
	791 KAR 001:100
165A.340	791 KAR 001:020

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	791 KAR 001:155
165A.350	791 KAR 001:010
	791 KAR 001:020
	791 KAR 001:025
	791 KAR 001:030
	791 KAR 001:070
	791 KAR 001:150
165A.360	791 KAR 001:010
	791 KAR 001:020
	791 KAR 001:025
	791 KAR 001:030
	791 KAR 001:150
	791 KAR 001:160
165A.370	791 KAR 001:020
	791 KAR 001:027
	791 KAR 001:030
	791 KAR 001:040
	791 KAR 001:050
	791 KAR 001:060
	791 KAR 001:070
	791 KAR 001:080
	791 KAR 001:100
	791 KAR 001:155
	791 KAR 001:160
165A.380	791 KAR 001:025
	791 KAR 001:070
165A.390	791 KAR 001:020
	791 KAR 001:030
	791 KAR 001:155
165A.420	791 KAR 001:025
165A.450	791 KAR 001:020
	791 KAR 001:035
	791 KAR 001:050
165A.460	502 KAR 010:070
	502 KAR 010:090
	791 KAR 001:040
	791 KAR 001:070
165A.460-165A.515	791 KAR 001:060
165A.465	791 KAR 001:050
	791 KAR 001:070
165A.470	791 KAR 001:050
	791 KAR 001:070
165A.475	791 KAR 001:050
	791 KAR 001:070
165A.480	791 KAR 001:050
	791 KAR 001:070
165A.485	791 KAR 001:070
165A.500	791 KAR 001:080
165A.510	791 KAR 001:080
	791 KAR 001:100
165A.990	791 KAR 001:030
171	725 KAR 001:010
	725 KAR 001:050
171.027	725 KAR 002:015
171.125	725 KAR 002:015
171.221	725 KAR 002:080
171.420	725 KAR 001:025
	725 KAR 001:061
171.450	725 KAR 001:020
	725 KAR 001:030
	725 KAR 001:061
171.470	725 KAR 001:025
171.480	725 KAR 001:025
171.500	725 KAR 001:025
	725 KAR 001:040
171.520	725 KAR 001:025
171.550	725 KAR 001:025
171.580	725 KAR 001:025
171.590	725 KAR 001:025
171.600	725 KAR 001:020
171.670	725 KAR 001:020
173.040	725 KAR 002:015
173.340	725 KAR 002:015
173.480	725 KAR 002:015

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173.725	725 KAR 002:015
176.050	603 KAR 005:150
176.051	603 KAR 003:100
177.047	603 KAR 005:150
177.0734-177.0738	603 KAR 004:035
177.103	603 KAR 005:150
177.106	603 KAR 005:150
177.572-177.576	603 KAR 010:011E
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177.830-177.890	603 KAR 010:011E
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177.990	603 KAR 010:011E
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	603 KAR 010:040
186.021	806 KAR 039:070
186.412	502 KAR 013:010
	502 KAR 013:040
186.480	782 KAR 001:070
186.570	921 KAR 001:390
186.576	782 KAR 001:070
186.577	782 KAR 001:070
186.578	782 KAR 001:070
186.579	782 KAR 001:070
186A.040	806 KAR 039:070
186A.042	806 KAR 039:070
186A.095	806 KAR 039:070
189A.010	782 KAR 001:070
189.450	502 KAR 015:020
189.635	502 KAR 015:010
189.751	502 KAR 015:020
189.752	502 KAR 015:020
189.753	502 KAR 015:020
190.010	605 KAR 001:051
	605 KAR 001:211
190.010-190.990	605 KAR 001:191
190.030	605 KAR 001:051
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190.032	605 KAR 001:211
190.040	605 KAR 001:091
190.058	605 KAR 001:131
190.062	605 KAR 001:131
194.010	921 KAR 004:116E
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194.025	907 KAR 017:010
194.030	787 KAR 001:310
194.060	921 KAR 004:116E
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194.070	921 KAR 004:116E
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194A	921 KAR 002:015E
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194A.005	907 KAR 020:001
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194A.025	907 KAR 017:005
194A.050	902 KAR 002:230E
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194A.060	907 KAR 003:170
	910 KAR 001:190
194A.540	201 KAR 020:320
196	501 KAR 006:290
197	501 KAR 006:290
196.035	501 KAR 002:060
196.020	501 KAR 002:060
196.030	501 KAR 006:250
197.045	501 KAR 002:060
	725 KAR 002:015
198B.032	725 KAR 002:015
198B.040	815 KAR 007:110
198B.050	725 KAR 002:015

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198B.070	815 KAR 007:110
198B.400	815 KAR 004:010
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198B.400-198B.0540	815 KAR 004:025
198B.470	815 KAR 004:010
198B.480	815 KAR 004:010
198B.490	815 KAR 004:027
198B.500	815 KAR 004:010
198B.510	815 KAR 004:010
198B.540	815 KAR 004:010
198B.550-198B.630	815 KAR 007:080
199.011	922 KAR 001:565
199.462	922 KAR 001:565
199.470-199.590	922 KAR 001:565
199.555	907 KAR 017:005
199.894	922 KAR 002:160E
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199.896	922 KAR 002:160E
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199.898	922 KAR 002:160E
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199.8982	922 KAR 002:160E
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199.899	922 KAR 002:160E
	922 KAR 002:160
202A	907 KAR 017:005
202A.011	702 KAR 007:150
	921 KAR 002:015E
	921 KAR 002:015
202A.410	501 KAR 014:010
205.175	921 KAR 001:020
205.177	921 KAR 001:020
205.201	910 KAR 001:190
205.2005	921 KAR 003:026E
	921 KAR 003:027E
	921 KAR 003:027
205.203	910 KAR 001:190
205.211	922 KAR 001:565
205.245	921 KAR 002:015E
	921 KAR 002:015
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205.455	910 KAR 001:190
205.465	910 KAR 001:190
205.510	900 KAR 012:005E
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	907 KAR 003:170
	907 KAR 010:815
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250.520	907 KAR 020:020
205.5510-205.5520	907 KAR 023:020E
	907 KAR 023:020
205.559	900 KAR 012:005E
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205.5591	900 KAR 012:005E
	900 KAR 012:005
	907 KAR 003:170
205.560	907 KAR 001:604
	907 KAR 003:170
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205.561	907 KAR 023:020E
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205.5631	907 KAR 023:020E
	907 KAR 023:020
205.5632	907 KAR 023:020E
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205.5634	907 KAR 023:020E

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205.5636	907 KAR 023:020E
	907 KAR 023:020
205.5638	907 KAR 023:020E
	907 KAR 023:020
205.5639	907 KAR 023:020E
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205.565	907 KAR 010:830
205.624	907 KAR 001:005
	907 KAR 017:010
205.6312	907 KAR 001:005
	907 KAR 001:604
205.6316	907 KAR 023:020E
	907 KAR 023:020
205.637	907 KAR 010:815
	907 KAR 010:830
205.638	907 KAR 010:830
205.639	907 KAR 010:815
	907 KAR 010:830
205.640	907 KAR 010:815
	907 KAR 010:830
205.6405	907 KAR 010:815
205.6406	907 KAR 010:815
205.6407	907 KAR 010:815
205.6408	907 KAR 010:815
204.6485	907 KAR 001:604
205.710	921 KAR 001:020
	921 KAR 001:390
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205.712	921 KAR 001:020
	921 KAR 001:390
205.721	921 KAR 001:390
205.730	921 KAR 001:020
	921 KAR 001:390
205.735	921 KAR 001:020
205.7685	921 KAR 001:020
205.772	921 KAR 001:020
205.774	921 KAR 001:020
205.776	921 KAR 001:020
205.800	921 KAR 001:020
205.802	921 KAR 001:400E
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205.8451	907 KAR 001:604
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205.8451-205.8483	907 KAR 017:005
205.990	921 KAR 001:020
	921 KAR 001:400E
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209.020	502 KAR 012:010
	921 KAR 002:015E
	921 KAR 002:015
209.030	502 KAR 012:010
	906 KAR 001:180
209.032	902 KAR 020:081
	906 KAR 001:180
209A.020	502 KAR 012:010
209A.030	502 KAR 012:010
	910 KAR 001:190
209A.100	502 KAR 012:010
209A.110	502 KAR 012:010
209A.130	502 KAR 012:010
210.366	201 KAR 026:175
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211.090	902 KAR 010:120
211.180	902 KAR 002:212E
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211.332	900 KAR 012:005E
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211.600	502 KAR 012:010
211.990	902 KAR 010:120
	902 KAR 010:121
211.994	902 KAR 048:010
	902 KAR 048:010
211.210	902 KAR 010:120
211.220	902 KAR 010:120
211.350	815 KAR 035:020
211.900-211.905	902 KAR 048:010
	902 KAR 048:010
211.990	902 KAR 010:120
	902 KAR 048:010
211.994	902 KAR 048:010
	902 KAR 048:010
211.9061-200.9079	902 KAR 048:010
211.9063	902 KAR 048:030
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211.9069	902 KAR 048:030
211.9071	902 KAR 048:030
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211.9075	902 KAR 048:030
212.626	815 KAR 007:110
213.036	921 KAR 001:390
213.046	921 KAR 001:390
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213.071	921 KAR 001:390
214.010	902 KAR 002:212E
	902 KAR 002:213E
	902 KAR 002:221E
214.020	902 KAR 002:221E
214.036	922 KAR 002:160E
	922 KAR 002:160
214.623	902 KAR 002:020
214.645	902 KAR 002:020
	902 KAR 002:212E
	902 KAR 002:213E
214.990	902 KAR 002:020
215.520	902 KAR 002:020
216.380	907 KAR 010:815
	907 KAR 010:830
216A.070	201 KAR 006:020
216A.080	201 KAR 006:020
216.510	902 KAR 020:460E
216.530	921 KAR 002:015E
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216.557	921 KAR 002:015E
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216.710-216.716	906 KAR 001:180
	910 KAR 004:010
216.765	921 KAR 002:015E
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216.935	902 KAR 020:081
	907 KAR 001:030
216.936	907 KAR 001:030
216.937	902 KAR 020:081
	907 KAR 001:030
216.9375	902 KAR 020:081
	907 KAR 001:030
216.935-216.939	910 KAR 004:010
216.939	907 KAR 001:030
216A.080	201 KAR 006:040
216A.090	201 KAR 006:040
216B	921 KAR 002:015E
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216B.010-216B.130	902 KAR 020:081
216B.015	502 KAR 012:010
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216B.990	502 KAR 012:010
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217.015	907 KAR 023:020E
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217.055	201 KAR 002:076
217.065	201 KAR 002:076
217.186	201 KAR 002:360
217.211	806 KAR 017:280
217.660	902 KAR 048:010
217.801	902 KAR 048:010
	902 KAR 048:010
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217B	302 KAR 050:021
	302 KAR 050:046
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218A.010	016 KAR 001:030
218A.1431	502 KAR 047:010
218A.172	201 KAR 020:057
218A.205	201 KAR 002:050
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224A.011	200 KAR 017:110E
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224A.020	200 KAR 017:110E
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224A.035	200 KAR 017:110E
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224A.040	200 KAR 017:110E
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224A.050-224A.314	200 KAR 017:110E
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224.1-010-410	502 KAR 047:010
224.60-105	815 KAR 030:060
224.60-135	815 KAR 030:060
224.99-010	502 KAR 047:010
227.300	725 KAR 002:015
	815 KAR 010:060
	815 KAR 030:060
227.320	815 KAR 010:060
227.330	815 KAR 010:060
227.460	815 KAR 035:020
227.480	815 KAR 035:020
227.487	815 KAR 035:020
227.489	815 KAR 007:110
227.491	815 KAR 035:020
227.700	815 KAR 010:070
227.702	815 KAR 010:070
227.704	815 KAR 010:070
227.708	815 KAR 010:070
227.710	815 KAR 010:070
227.715	815 KAR 010:070
227.750	815 KAR 010:070
227.752	815 KAR 010:070
227.990	815 KAR 010:060
230	810 KAR 006:001
230.215	810 KAR 004:040
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	810 KAR 005:060
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230.225	810 KAR 008:025E
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230.240	810 KAR 008:025E
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230.260	810 KAR 004:040
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230.280	810 KAR 005:070
230.290	810 KAR 005:070
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	810 KAR 008:025
230.300	810 KAR 005:070
230.310	810 KAR 005:070
230.320	810 KAR 005:070
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	810 KAR 008:025
230.370	810 KAR 008:025E
	810 KAR 008:025
234.120	815 KAR 030:010
234.130	815 KAR 030:010
234.140	815 KAR 010:060
235	301 KAR 006:001
235.40	301 KAR 006:070
235.220	301 KAR 006:070
235.315	301 KAR 001:018
237.110	502 KAR 011:010
	502 KAR 011:060
	502 KAR 011:070
	502 KAR 013:030
	502 KAR 013:040
	502 KAR 013:050
	502 KAR 013:060
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	502 KAR 030:060
	503 KAR 004:010
	503 KAR 004:040
	503 KAR 004:050
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237.120	503 KAR 004:040
237.122	503 KAR 004:040
237.124	503 KAR 004:040
	503 KAR 004:050
237.126	503 KAR 004:040
237.138	502 KAR 013:030
	502 KAR 013:040
	502 KAR 013:050
	502 KAR 013:060
	502 KAR 013:080
237.140	502 KAR 013:030
	502 KAR 013:040
	502 KAR 013:050
	502 KAR 013:060
	502 KAR 013:080
237.142	502 KAR 013:030
	502 KAR 013:040
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237.138-237.142	502 KAR 013:010
241.010	103 KAR 030:120
243.027	804 KAR 004:415
243.028	804 KAR 004:415
243.029	804 KAR 004:415
243.030	103 KAR 030:120
	804 KAR 004:212
243.040	103 KAR 030:120
243.100	804 KAR 004:480
243.220	804 KAR 004:221
243.260	804 KAR 004:251
243.520	804 KAR 004:480
247.100	303 KAR 001:110
247.145	303 KAR 001:005
	303 KAR 001:010
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247.153	303 KAR 001:005
247.154	303 KAR 001:005
	303 KAR 001:010
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247.160	303 KAR 001:075
258.065	902 KAR 002:020
258.990	902 KAR 002:020
260.850-260.869	302 KAR 050:021
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281A.120	502 KAR 010:120
281A.130	502 KAR 010:120
281A.150	502 KAR 010:120
281A.160	502 KAR 010:035
	502 KAR 010:110
	502 KAR 010:120
281A.170	502 KAR 010:120
285.065	301 KAR 002:082
285.085	301 KAR 002:082
302.31	921 KAR 001:390
302.33	921 KAR 001:390
302.34	921 KAR 001:020
302.50	921 KAR 001:400E
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302.56	921 KAR 001:400E
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302.80	921 KAR 001:400E
	921 KAR 001:400
303.107	921 KAR 001:020
303.21	921 KAR 001:020
303.4	921 KAR 001:400E
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303.5	921 KAR 001:390
303.70	921 KAR 001:020
303.8	921 KAR 001:400E
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303.30-303.32	921 KAR 001:400E
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304.1-050	806 KAR 011:020
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304.2-160	806 KAR 011:020
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304.2-165	806 KAR 011:020
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304.2-230	806 KAR 017:290
304.2-310	806 KAR 017:290
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304.3-240	806 KAR 012:010
304.3-270	806 KAR 014:007
304.4-010	806 KAR 014:007
304.5-040	806 KAR 011:020
304.5-140	806 KAR 005:025
304.9-020	806 KAR 011:020
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304.9-051	806 KAR 011:020
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304.10-050	806 KAR 010:030
304.10-170	806 KAR 010:030
304.10-180	806 KAR 010:030
304.11-030	806 KAR 011:020
304.11-045	806 KAR 011:020
304.12-010	806 KAR 012:010
304.12-020	806 KAR 012:010
304.12-060	806 KAR 012:010
304.12-120	806 KAR 012:010
304.12.130	806 KAR 012:010
304.13-011	806 KAR 046:050
304.13-051	806 KAR 046:050
304.14-120	806 KAR 014:007
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304.14-640	907 KAR 020:001
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304.17-412	806 KAR 017:280
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304.17A-005	806 KAR 011:020
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304.17A-095	806 KAR 014:007
304.17A-096	806 KAR 014:007
304.17A-138	806 KAR 017:270
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304.17A-200	806 KAR 017:450
304.17A-230	806 KAR 017:240
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304.17A-330	806 KAR 017:240
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304.17A-527	806 KAR 017:300
304.17A-530	806 KAR 017:300
304.17A-532	806 KAR 017:300
304.17A-560	806 KAR 017:300
304.17A-575	806 KAR 017:300
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304.17A-619	806 KAR 017:280
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304.17A-631	806 KAR 017:290
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304.17A-728	806 KAR 017:300
304.17A-730	806 KAR 017:370
304.17A-732	806 KAR 017:590
304.17A-750	806 KAR 017:450
304.17A-770	806 KAR 017:450
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304.17A-846	806 KAR 017:470
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304.17B-021	806 KAR 017:350
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304.17C-010	806 KAR 014:007
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304.17C-070	806 KAR 017:300
304.17C-090	806 KAR 017:370
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304.18-045	806 KAR 017:280
304.18-085	806 KAR 018:030
304.18-114	806 KAR 017:260
304.18-120	806 KAR 017:260
304.32-145	806 KAR 018:030
304.32-147	806 KAR 017:280
304.32-185	806 KAR 018:030
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304.38-240	907 KAR 003:170
304.39-010	806 KAR 017:370
304.39-080	806 KAR 039:070
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304.39-085	806 KAR 039:070
304.39-087	806 KAR 039:070
304.39-090	806 KAR 039:070
304.39-117	806 KAR 039:070
304.39-340	806 KAR 017:370
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304.47-020	806 KAR 017:450
304.48-020	806 KAR 046:050
304.48-180	806 KAR 046:050
304.99	806 KAR 017:300
304.99-020	806 KAR 011:020
304.99-085	806 KAR 010:030
307.13	921 KAR 001:020
309.350	201 KAR 042:010
309.351	201 KAR 042:050
	201 KAR 042:110
309.352	201 KAR 042:080
309.355	201 KAR 042:010
	201 KAR 042:030
	201 KAR 042:050
	201 KAR 042:060
	201 KAR 042:061
	201 KAR 042:080
	201 KAR 042:110
309.357	201 KAR 042:010
	201 KAR 042:040
309.358	201 KAR 042:035
309.359	201 KAR 042:035
	201 KAR 042:070
309.361	201 KAR 042:040
	201 KAR 042:110
309.362	201 KAR 042:035
	201 KAR 042:040
	201 KAR 042:050
	201 KAR 042:060
	201 KAR 042:061
309.363	201 KAR 042:035
	201 KAR 042:080
309.3631	201 KAR 042:080
309.404	201 KAR 047:010
309.406	201 KAR 047:010
	201 KAR 047:030
309.412	201 KAR 047:010
	201 KAR 047:030
309.414	201 KAR 047:010
	201 KAR 047:030
309.416	201 KAR 047:010
	201 KAR 047:030
309.418	201 KAR 047:010
	201 KAR 047:030
309.420	201 KAR 047:010
	201 KAR 047:030
310.005	910 KAR 001:190
310.021	910 KAR 001:190
310.031	910 KAR 001:190
311.282	902 KAR 002:020

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311.550	907 KAR 017:005
	907 KAR 020:001
311.571	902 KAR 002:020
311.5975	900 KAR 012:005E
	900 KAR 012:005
311.621	906 KAR 001:180
311.621-311.643	907 KAR 017:010
311.840	902 KAR 020:081
311A.100	502 KAR 030:060
312.019	201 KAR 021:035
	201 KAR 021:054
	201 KAR 021:070
	201 KAR 021:090
	201 KAR 021:100
312.085	201 KAR 021:090
312.115	201 KAR 021:070
313.022	201 KAR 008:520
313.030	201 KAR 008:520
313.100	201 KAR 008:520
314.011	201 KAR 020:057
	201 KAR 020:215
	201 KAR 020:220
	201 KAR 020:280
	201 KAR 020:320
	502 KAR 012:010
	702 KAR 007:150
	902 KAR 020:081
	907 KAR 017:005
	907 KAR 020:001
	922 KAR 002:160E
	922 KAR 002:160
314.021	201 KAR 020:320
	201 KAR 020:478
314.035	201 KAR 020:472
	201 KAR 020:474
	201 KAR 020:476
	201 KAR 020:478
314.041	201 KAR 020:320
	201 KAR 020:480
314.042	201 KAR 020:057
	902 KAR 020:081
314.051	201 KAR 020:480
314.073	201 KAR 020:215
	201 KAR 020:220
314.089	201 KAR 020:478
314.091	201 KAR 020:478
314.111	201 KAR 020:280
	201 KAR 020:320
	201 KAR 020:360
314.103	201 KAR 020:476
	201 KAR 020:478
314.131	201 KAR 020:220
	201 KAR 020:280
	201 KAR 020:320
	201 KAR 020:472
	201 KAR 020:474
	201 KAR 020:476
314.137	201 KAR 020:470
	201 KAR 020:472
	201 KAR 020:474
	201 KAR 020:476
	201 KAR 020:478
314.193	201 KAR 020:057
314.195	201 KAR 020:057
314.991	201 KAR 020:215
	201 KAR 020:478
315.010	201 KAR 002:074
	201 KAR 002:411E
	201 KAR 002:412E
	201 KAR 002:420
	902 KAR 002:020
315.020	201 KAR 002:074
	201 KAR 002:076
	201 KAR 002:411E

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	201 KAR 002:412E
315.030	201 KAR 002:074
315.035	201 KAR 002:050
	201 KAR 002:076
315.0351	201 KAR 002:050
	201 KAR 002:076
315.036	201 KAR 002:050
315.050	201 KAR 002:050
	201 KAR 002:411E
	201 KAR 002:412E
	201 KAR 002:420
315.060	201 KAR 002:050
315.065	201 KAR 002:411E
	201 KAR 002:412E
315.110	201 KAR 002:050
315.120	201 KAR 002:050
315.121	201 KAR 002:074
	201 KAR 002:270
	201 KAR 002:430
315.131	201 KAR 002:430
315.135	201 KAR 002:411E
	201 KAR 002:412E
315.136	201 KAR 002:420
315.191	201 KAR 002:030
	201 KAR 002:050
	201 KAR 002:076
	201 KAR 002:270
315.205	201 KAR 002:411E
	201 KAR 002:412E
315.210	201 KAR 002:030
315.402	201 KAR 002:050
315.500	201 KAR 002:411E
	201 KAR 002:412E
316.010	201 KAR 015:110E
	201 KAR 015:110
316.030	201 KAR 015:040E
	201 KAR 015:040
	201 KAR 015:050E
	201 KAR 015:050
	201 KAR 015:110E
	201 KAR 015:110
316.125	201 KAR 015:030E
	201 KAR 015:030
	201 KAR 015:110E
	201 KAR 015:110
316.127	201 KAR 015:110E
	201 KAR 015:110
316.130	201 KAR 015:030E
	201 KAR 015:030
	201 KAR 015:110E
	201 KAR 015:110
316.132	201 KAR 015:030E
	201 KAR 015:030
316.140	201 KAR 015:030E
	201 KAR 015:030
316.165	201 KAR 015:125E
	201 KAR 015:125
316.260	201 KAR 015:110E
	201 KAR 015:110
317.410	201 KAR 014:030
	201 KAR 014:085
	201 KAR 014:105
	201 KAR 014:110
	201 KAR 014:115
	201 KAR 014:150
317.440	201 KAR 014:015
	201 KAR 014:040
	201 KAR 014:065
	201 KAR 014:085
	201 KAR 014:105
	201 KAR 014:110
	201 KAR 014:115
	201 KAR 014:125
317.450	201 KAR 014:015

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	201 KAR 014:030
	201 KAR 014:040
	201 KAR 014:050
	201 KAR 014:065
	201 KAR 014:105
	201 KAR 014:125
	201 KAR 014:150
	201 KAR 014:180
317.570	201 KAR 014:015
317.590	201 KAR 014:040
317A.020	201 KAR 012:082E
	201 KAR 012:082
317A.050	201 KAR 012:082E
	201 KAR 012:082
317A.090	201 KAR 012:082E
	201 KAR 012:082
318.010	815 KAR 020:195
318.030	815 KAR 020:050
318.134	815 KAR 020:050
	815 KAR 020:195
318.160	815 KAR 020:050
319.005	201 KAR 026:130
319.010	201 KAR 026:115
319.015	201 KAR 026:215
319.032	201 KAR 026:130
	201 KAR 026:175
	201 KAR 026:185
	201 KAR 026:230
	201 KAR 026:250
319.050	201 KAR 026:125
	201 KAR 026:155
	201 KAR 026:160
	201 KAR 026:175
	201 KAR 026:185
	201 KAR 026:190
	201 KAR 026:230
319.053	201 KAR 026:175
	201 KAR 026:190
	201 KAR 026:230
	201 KAR 026:270
319.056	201 KAR 026:190
	201 KAR 026:270
319.064	201 KAR 026:160
	201 KAR 026:175
	201 KAR 026:190
	201 KAR 026:230
	201 KAR 026:250
319.071	201 KAR 026:160
	201 KAR 026:175
	201 KAR 026:225
319.082	201 KAR 026:130
	201 KAR 026:215
319.118	201 KAR 026:130
319.140	201 KAR 026:310
319.990	201 KAR 026:130
319A.010	902 KAR 020:081
	907 KAR 001:604
319C	201 KAR 043:090
319C.050	201 KAR 043:050
	201 KAR 043:060
	201 KAR 043:080
319C.060	201 KAR 043:030
	201 KAR 043:040
	201 KAR 043:050
	201 KAR 043:060
	201 KAR 043:071
	201 KAR 043:080
319C.070	201 KAR 043:010
	201 KAR 043:060
319C.080	201 KAR 043:010
	201 KAR 043:020
	201 KAR 043:030
319C.110	201 KAR 043:060
319C.140	201 KAR 043:100

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321.181	902 KAR 002:020
322.010	725 KAR 002:015
323.010	725 KAR 002:015
323.020	725 KAR 002:015
324B.030	201 KAR 047:010
324B.040	201 KAR 047:010
327.010	201 KAR 022:045
	902 KAR 020:081
	907 KAR 001:604
327.070	201 KAR 022:045
329.010-329.030	502 KAR 020:020
322.110	902 KAR 010:120
323.020	902 KAR 010:120
332.015	502 KAR 010:010
332.095	791 KAR 001:070
332.204	502 KAR 010:030
	502 KAR 010:035
332.216	502 KAR 010:020
	502 KAR 010:050
	502 KAR 010:060
	502 KAR 010:080
333.020	902 KAR 002:020
333.130	902 KAR 002:020
	902 KAR 002:212E
	902 KAR 002:213E
334A.020	016 KAR 002:050
	902 KAR 020:081
	907 KAR 001:604
334A.033	016 KAR 002:050
334A.035	016 KAR 002:050
334A.060	016 KAR 002:050
334A.190	016 KAR 002:050
337.275	803 KAR 001:063
	803 KAR 001:065
	803 KAR 001:066
	803 KAR 001:070
	803 KAR 001:075
	803 KAR 001:080
	803 KAR 001:090
	922 KAR 002:160E
	922 KAR 002:160
337.275-337.325	803 KAR 001:005
337.285	803 KAR 001:060
	803 KAR 001:063
	803 KAR 001:065
	803 KAR 001:066
	803 KAR 001:070
	803 KAR 001:075
	803 KAR 001:080
	803 KAR 001:090
337.345	803 KAR 001:005
337.385-337.405	803 KAR 001:005
337.420-337.433	803 KAR 001:025
338.015	803 KAR 002:330E
341	725 KAR 002:015
341.070	787 KAR 001:010
	787 KAR 001:020
	787 KAR 001:220
	787 KAR 001:260
	787 KAR 001:290
	787 KAR 001:300
341.115	787 KAR 001:020
341.145	787 KAR 001:150
341.190	787 KAR 001:010
	787 KAR 001:020
	787 KAR 001:060
	787 KAR 001:220
341.243	787 KAR 001:010
341.250	787 KAR 001:010
	787 KAR 001:220
	787 KAR 001:260
341.262	787 KAR 001:010
	787 KAR 001:220
341.270	787 KAR 001:210

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341.272	787 KAR 001:210
	787 KAR 001:290
341.350	787 KAR 001:090
	787 KAR 001:150
	787 KAR 001:310
341.360	787 KAR 001:060
	787 KAR 001:080
	787 KAR 001:090
	787 KAR 001:150
341.370	787 KAR 001:060
	787 KAR 001:090
	787 KAR 001:150
341.380	787 KAR 001:090
	787 KAR 001:150
341.420	787 KAR 001:110
341.430	787 KAR 001:110
341.440	787 KAR 001:110
341.450	787 KAR 001:110
341.500	787 KAR 001:140
341.540	787 KAR 001:300
341.510	787 KAR 001:140
341.530	787 KAR 001:060
342	725 KAR 002:015
342.0011	803 KAR 025:305E
342.020	803 KAR 025:305E
342.040	803 KAR 025:305E
342.270	803 KAR 025:305E
342.730	803 KAR 025:305E
344	725 KAR 002:015
344.030	101 KAR 001:365
	105 KAR 001:210
349.3401	501 KAR 014:010
355.9	030 KAR 005:011E
	030 KAR 005:011
	030 KAR 005:021E
	030 KAR 005:021
355.9-513A	030 KAR 005:031E
	030 KAR 005:031
355.9-515	030 KAR 005:031E
	030 KAR 005:031
	030 KAR 005:041E
	030 KAR 005:041
	030 KAR 005:051E
	030 KAR 005:051
355.9-516	030 KAR 005:021E
	030 KAR 005:021
	030 KAR 005:031E
	030 KAR 005:031
355.9-516A	030 KAR 005:031E
	030 KAR 005:031
355.9-519	030 KAR 005:041E
	030 KAR 005:041
	030 KAR 005:051E
	030 KAR 005:051
	030 KAR 005:060E
	030 KAR 005:060
355.9-520	030 KAR 005:031E
	030 KAR 005:031
355.9-521	030 KAR 005:021E
	030 KAR 005:021
355.9-523	030 KAR 005:060E
	030 KAR 005:060
355.9-525	030 KAR 005:060E
	030 KAR 005:060
355.9-526	030 KAR 005:041E
	030 KAR 005:041
	030 KAR 005:051E
	030 KAR 005:051
365.571	030 KAR 003:010
365.573	030 KAR 003:010
365.581	030 KAR 003:020
365.593	030 KAR 003:010
	030 KAR 003:030
367.110-367-360	791 KAR 001:010

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387	922 KAR 001:565
387.500-387.800	907 KAR 017:010
387.510	907 KAR 017:005
400.203	907 KAR 003:170
403.160	921 KAR 001:400E
	921 KAR 001:400
403.210-403.240	921 KAR 001:400E
	921 KAR 001:400
403.211	921 KAR 001:020
403.270-403.355	922 KAR 001:565
403.707	502 KAR 012:010
405.024	922 KAR 001:565
405.430	921 KAR 001:020
	921 KAR 001:390
	921 KAR 001:400E
	921 KAR 001:400
405.440	921 KAR 001:400E
	921 KAR 001:400
405.991	921 KAR 001:400E
	921 KAR 001:400
406.011	921 KAR 001:390
406.021	921 KAR 001:390
	921 KAR 001:400E
	921 KAR 001:400
406.025	921 KAR 001:390
	921 KAR 001:400E
	921 KAR 001:400
406.035	921 KAR 001:020
406.180	921 KAR 001:390
411.32	806 KAR 017:370
415.174	907 KAR 003:170
415.184	907 KAR 003:170
416.120	921 KAR 002:015E
	921 KAR 002:015
416.212	921 KAR 002:015E
	921 KAR 002:015
416.2030	921 KAR 002:015E
	921 KAR 002:015
416.2095	921 KAR 002:015E
	921 KAR 002:015
416.2096	921 KAR 002:015E
	921 KAR 002:015
416.2099	921 KAR 002:015E
	921 KAR 002:015
421.570	502 KAR 012:010
422.317	907 KAR 003:170
431.215	501 KAR 002:060
431.300-431.307	907 KAR 003:170
431.600-431.660	040 KAR 003:020
434.757	301 KAR 001:018
434.840-434.860	907 KAR 003:170
434.845	921 KAR 001:020
438.310	782 KAR 001:010
439	501 KAR 006:290
439.179	501 KAR 003:130
439.250	501 KAR 006:250
439.352	501 KAR 001:050
439.356	501 KAR 001:050
439.358	501 KAR 001:050
439.551	501 KAR 006:250
439.553	501 KAR 006:250
439.3105-439.3108	501 KAR 006:250
440.050	907 KAR 003:170
440.120	907 KAR 023:020E
	907 KAR 023:020
441	501 KAR 003:150
441.045	501 KAR 002:060
	501 KAR 003:110
	501 KAR 003:120
	501 KAR 003:170
	501 KAR 007:040
	501 KAR 007:060
	501 KAR 007:090
	501 KAR 007:120

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	501 KAR 007:140
	501 KAR 007:150
441.046	502 KAR 014:010
441.055	501 KAR 003:110
	501 KAR 003:120
	501 KAR 003:130
	501 KAR 003:170
	501 KAR 007:040
	501 KAR 007:060
	501 KAR 007:090
	501 KAR 007:100
	501 KAR 007:110
	501 KAR 007:120
	501 KAR 007:130
	501 KAR 007:140
	501 KAR 007:150
441.075	501 KAR 002:060
441.115	501 KAR 007:120
441.125	501 KAR 003:130
	501 KAR 007:120
441.203	806 KAR 017:370
441.206	806 KAR 017:370
441.207	806 KAR 017:370
441.208	806 KAR 017:370
441.250	806 KAR 017:370
441.255	806 KAR 017:370
441.256	806 KAR 017:370
441.258	806 KAR 017:370
441.510	501 KAR 002:060
441.560	501 KAR 007:090
446.010	501 KAR 006:250
	502 KAR 013:010
446.030	030 KAR 005:031E
	030 KAR 005:031
447.500-447.520	907 KAR 023:020E
	907 KAR 023:020
454.220	921 KAR 001:400E
	921 KAR 001:400
510.010-510.140	502 KAR 012:010
514	921 KAR 002:015E
	921 KAR 002:015
524.140	502 KAR 012:010
527.100	922 KAR 001:565
527.110	922 KAR 001:565
529.010	040 KAR 006:030
	502 KAR 012:010
529.100	502 KAR 012:010
529.130	040 KAR 006:030
529.140	040 KAR 006:030
529.150	040 KAR 006:030
530.020	502 KAR 012:010
530.064	502 KAR 012:010
531.310	502 KAR 012:010
532.043	501 KAR 001:050
532.060	501 KAR 002:020
	501 KAR 001:050
532.100	501 KAR 002:020
	501 KAR 002:050
	501 KAR 002:060
	501 KAR 002:070
	501 KAR 003:130
	501 KAR 007:120
533.010	501 KAR 002:070
533.025	501 KAR 002:070
533.200	013 KAR 003:020
533.210	013 KAR 003:020
600.020	502 KAR 012:010
	922 KAR 001:565
	922 KAR 002:160E
	922 KAR 002:160
605.120	922 KAR 001:565
	922 KAR 002:160E
	922 KAR 002:160
610.110	922 KAR 001:565

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620.020	201 KAR 020:320
	907 KAR 017:005
	907 KAR 020:001
	922 KAR 001:565
	922 KAR 002:160E
620.020-620.050	040 KAR 003:020
	922 KAR 002:160
620.030	502 KAR 012:010
	906 KAR 001:180
620.090	922 KAR 001:565
620.140	922 KAR 001:565
620.142	922 KAR 001:565
620.170	922 KAR 001:565
7 C.F.R.	302 KAR 050:021
	302 KAR 050:046
	302 KAR 050:056
	921 KAR 003:026E
	921 KAR 003:027E
	921 KAR 003:027
	922 KAR 002:160E
	922 KAR 002:160
16 C.F.R.	201 KAR 015:110E
	201 KAR 015:110
20 C.F.R.	907 KAR 017:005
	907 KAR 020:001
	921 KAR 002:015E
	921 KAR 002:015
	922 KAR 002:160E
	922 KAR 002:160
	923 KAR 002:470
23 C.F.R.	603 KAR 010:011E
	603 KAR 010:040E
	603 KAR 010:040
29 C.F.R.	105 KAR 001:210
	803 KAR 002:330E
	806 KAR 017:260
	902 KAR 010:120
34 C.F.R.	016 KAR 004:020
	781 KAR 001:010
	781 KAR 001:020
	781 KAR 001:030
	781 KAR 001:040
	781 KAR 001:050
	782 KAR 001:010
	922 KAR 002:160E
	922 KAR 002:160
40 C.F.R.	902 KAR 048:010
	902 KAR 048:040
42 C.F.R.	907 KAR 001:005
	907 KAR 001:030
	907 KAR 001:604
	907 KAR 003:170
	907 KAR 010:815
	907 KAR 010:830
	907 KAR 017:005
	907 KAR 017:010
	907 KAR 020:001
	907 KAR 020:020
	907 KAR 023:020E
	907 KAR 023:020
45 C.F.R.	502 KAR 012:010
	806 KAR 017:470
	902 KAR 020:081
	907 KAR 001:030
	907 KAR 017:010
	921 KAR 001:020
	921 KAR 001:390
	921 KAR 001:400E
	921 KAR 001:400
	921 KAR 003:026E
	921 KAR 003:027E
	921 KAR 003:027
	921 KAR 004:116E
	921 KAR 004:116

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	922 KAR 002:160E
	922 KAR 002:160
49 C.F.R.	502 KAR 010:035
	502 KAR 010:110
	502 KAR 010:120
	791 KAR 001:060
59 C.F.R.	301 KAR 002:224
7 U.S.C.	302 KAR 050:021
	302 KAR 050:031
	302 KAR 050:046
	302 KAR 050:056
	302 KAR 050:080
	921 KAR 003:026E
	921 KAR 003:027E
	921 KAR 003:027
	922 KAR 002:160E
	922 KAR 002:160
8 U.S.C.	907 KAR 020:001
	921 KAR 002:015E
	921 KAR 002:015
15 U.S.C.	902 KAR 010:120
18 U.S.C.	502 KAR 013:010
	502 KAR 013:030
	502 KAR 013:040
	502 KAR 013:050
	502 KAR 013:060
	502 KAR 013:080
20 U.S.C.	016 KAR 004:020
	016 KAR 005:010
	702 KAR 007:065
	782 KAR 001:010
	921 KAR 003:026E
	921 KAR 003:027E
	921 KAR 003:027
21 U.S.C.	302 KAR 050:031
	902 KAR 002:230E
23 U.S.C.	603 KAR 010:011E
	603 KAR 010:040E
25 U.S.C.	922 KAR 002:160E
	922 KAR 002:160
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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 009:080	10-29-2021	Remain in Effect without Amendment
201 KAR 036:080	11-19-2021	Remain in Effect without Amendment
902 KAR 020:320	11-23-2021	Remain in Effect without Amendment
902 KAR 020:420	11-23-2021	Remain in Effect without Amendment
902 KAR 100:010	11-12-2021	Remain in Effect without Amendment
902 KAR 100:019	11-12-2021	Remain in Effect without Amendment
902 KAR 100:042	11-12-2021	Remain in Effect without Amendment
902 KAR 100:058	11-12-2021	Remain in Effect without Amendment
902 KAR 115:010	11-12-2021	Remain in Effect without Amendment
910 KAR 001:140	11-17-2021	Remain in Effect without Amendment
910 KAR 003:030	09-19-2018	To be amended, filing deadline 5-17-2023

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 48th 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.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).
† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

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401 KAR 048:320	8-4-2021		
806 KAR 006:070	10-6-2021		
806 KAR 009:360	10-6-2021		
806 KAR 017:480	10-6-2021		
810 KAR 008:060	10-11-2021		
921 KAR 003:020	6-24-2021		
921 KAR 003:030	6-24-2021		
921 KAR 003:035	6-24-2021		
921 KAR 003:042	6-24-2021		
921 KAR 003:090	6-24-2021		
921 KAR 002:090	6-24-2021		
922 KAR 001:510	11-23-2021		
922 KAR 002:190	6-24-2021		

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