



Administrative Register of Kentucky

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ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, May 13, 2022.

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on June 14, 2022, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - [2897](#) [Online agenda updated as needed](#)

INDEXES & OTHER INFORMATION

Regulation Review Procedure	2901	KRS Index	L - 20
ARRS Report	3147	Certifications	L - 41
Other Committee Reports	3154	Technical Amendments	L - 43
Locator Index - Effective Dates.....	L - 2	Subject Index.....	L - 44

EMERGENCIES

State Board of Elections

- [031 KAR 003:031E](#). Voting precinct and address of overseas voter whose last place of residence is in the Commonwealth is no longer a recognized residential address..... 2902
- [031 KAR 004:071E](#). Recanvas procedures..... 2904
- [031 KAR 004:131E](#). Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically 2906
- [031 KAR 004:141E](#). Submission of the federal postcard application via electronic mail..... 2909
- [031 KAR 004:196E](#). Consolidation of precincts and precinct election officers..... 2911
- [031 KAR 004:201E](#). Chain of custody for records during an election contest..... 2913
- [031 KAR 004:210E](#). Establishment of risk-limiting audit pilot program..... 2914
- [031 KAR 005:011E](#). Use of the federal writ-in absentee ballot..... 2916
- [031 KAR 005:026E](#). Ballot standards and election security..... 2918

Kentucky Retirement Systems

- [105 KAR 001:450E](#). Quasi-governmental employer reports on independent contractors and leased employees 2921

Board of Emergency Medical Services

- [202 KAR 007:560E](#). Ground vehicle staff..... 2926

Heritage Council

- [300 KAR 006:011E](#). Historic rehabilitation tax credit certifications..... 2929

Office of Unemployment Insurance

- [787 KAR 001:360E](#). Overpayment waivers 2937

Department for Public Health

- [902 KAR 002:020E](#). Reportable disease surveillance .. 2939

AMENDED IN-PROCESS EMERGENCIES

Board of Nursing

- [201 KAR 020:260E](#). Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing2948
- [201 KAR 020:480E](#). Licensure of graduates of foreign nursing schools.....2951

Office of Inspector General

- [900 KAR 014:010E](#). Essential personal care visitor programs; visitation guidelines.....2952

AS AMENDED

Executive Branch Ethics Commission

- [009 KAR 001:070](#). Standards of ethical conduct for transition team members and disclosure form..... 2955

Board of Pharmacy

- [201 KAR 002:440](#). Legend drug repository 2956

Board of Speech-Language Pathology and Audiology

- [201 KAR 017:110](#). Telehealth and telepractice 2958

Board of Nursing

- [201 KAR 020:480](#). Licensure of graduates of foreign nursing schools..... 2959

Board of Physical Therapy

- [201 KAR 022:020](#). Eligibility and credentialing procedure. 2960
- [201 KAR 022:070](#). Requirements for foreign-educated physical therapists and physical therapist assistants 2961

Board of Licensure and Certification for Dietitians and Nutritionists

- [201 KAR 033:015](#). Application; approved programs 2962

Board of Alcohol and Drug Counselors

- [201 KAR 035:070](#). Supervision experience 2963

Board of Medical Imaging and Radiation Therapy

- [201 KAR 046:060](#). Continuing education requirements 2966

Department of Fish and Wildlife Resources

- [301 KAR 004:010](#). Districts..... 2968
- [301 KAR 004:020](#). Ballard Wildlife Management Area

restrictions.....	2968
301 KAR 004:100 . Peabody Wildlife Management Area use requirements and restrictions.....	2968
301 KAR 004:110 . Administration of drugs to wildlife.....	2969
Board of Education	
702 KAR 003:090 . Depository of board, collateral.....	2970
704 KAR 007:170 . Corporal punishment.....	2971
704 KAR 019:002 . Alternative education programs.....	2971
780 KAR 003:020 . Compensation plan.....	2973
Department of Workplace Standards	
803 KAR 001:006 . Employer-employee relationship.....	2973
803 KAR 001:026 . Equal pay provisions, meaning and application.....	2974
803 KAR 001:061 . Overtime pay requirements.....	2977
803 KAR 001:064 . Trading time.....	2980
803 KAR 001:067 . Hours worked.....	2980
803 KAR 001:068 . Recordkeeping requirements.....	2980
803 KAR 001:071 . Executive, administrative, supervisory or professional employees; salesmen.....	2981
803 KAR 001:076 . Exclusions from minimum wage and overtime.....	2984
803 KAR 001:081 . Board, lodging, gratuities and other allowances.....	2985
803 KAR 001:091 . Workers with Disabilities and Work Activities Centers' employee's wages.....	2987
Department for Community Based Services	
922 KAR 001:470 . Central registry.....	2987
922 KAR 002:280 . Background checks for child care staff members, reporting requirements, and appeals.....	2988

AMENDED AFTER COMMENTS

Department for Public Health	
902 KAR 020:016 . Hospitals; operations and services ..	2993
902 KAR 020:106 . Operation and services; ambulatory surgical center.....	3005
Office of Inspector General	
906 KAR 001:110 . Critical access hospital services.....	3010
Department for Community Based Services	
922 KAR 001:360 . Private Child care placement, levels of care, and payment.....	3014
922 KAR 005:070 . Adult protective services.....	3021

PROPOSED AMENDMENTS

State Board of Elections	
031 KAR 004:170 . Exceptions to prohibition on electioneering.....	3026
Board of Licensure for Long-Term Care Administrators	
201 KAR 006:060 . Fees.....	3029
Board of Architects	
201 KAR 019:035 . Qualifications for examination and licensure.....	3031
201 KAR 019:087 . Continuing education.....	3033
Board of Emergency Medical Services	
202 KAR 007:560 . Ground vehicle staff.....	3036
Board of Education	
702 KAR 001:140 . Student records; hearing procedures.....	3039
Office of Unemployment Insurance	
787 KAR 001:360 . Overpayment waivers.....	3041
Horse Racing Commission	
810 KAR 008:010 . Medication; testing procedures; prohibited practices.....	3043
810 KAR 009:010 . Hearings, reviews, and appeals.....	3051
Department of Housing, Buildings and Construction	
815 KAR 007:120 . Kentucky Building Code.....	3053
815 KAR 008:010 . Licensing requirements for master HVAC contractors and journeyman HVAC mechanics.....	3056
815 KAR 010:060 . Kentucky standards of safety.....	3060

Department for Public Health	
902 KAR 002:020 . Reportable disease surveillance.....	3063
902 KAR 004:030 . Newborn screening program.....	3071
902 KAR 008:060 . Salary adjustments for local health departments.....	3076
902 KAR 008:100 . Disciplinary procedures applicable for local health department employees.....	3079
902 KAR 008:120 . Leave provisions applicable to employees of local health departments.....	3082
902 KAR 010:140 . On-site sewage disposal system installer certification program standards.....	3088
Department for Medicaid Services	
907 KAR 001:082 . Coverage provisions and requirements regarding rural health clinic services.....	3092
907 KAR 001:104 . Reimbursement for advanced practice registered nurse services.....	3105

NEW ADMINISTRATIVE REGULATIONS

State Board of Elections	
031 KAR 003:031 . Voting precinct and address of overseas voter whose last place of residence is in the Commonwealth is no longer a recognized residential address.....	3108
031 KAR 004:071 . Recanvas procedures.....	3109
031 KAR 004:131 . Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically.....	3111
031 KAR 004:141 . Submission of the federal postcard application via electronic mail.....	3114
031 KAR 004:196 . Consolidation of precincts and precinct election officers.....	3116
031 KAR 004:201 . Chain of custody for records during an election contest.....	3118
031 KAR 004:210 . Establishment of risk-limiting audit pilot program.....	3119
031 KAR 005:011 . Use of the federal writ-in absentee ballot.....	3121
031 KAR 005:026 . Ballot standards and election security.....	3123
Kentucky Retirement Systems	
105 KAR 001:450 . Quasi-governmental employer reports on independent contractors and leased employees.....	3125
Heritage Council	
300 KAR 006:011 . Historic rehabilitation tax credit certifications.....	3130
Department of Insurance	
806 KAR 017:585 . Annual report mental health parity nonquantitative treatment limitation compliance.....	3138
Office of Human Resource Management	
900 KAR 001:050 . Child and adult protection employees subject to state and national criminal background checks.....	3139
Department for Community Based Services	
922 KAR 001:290 . Background checks for private child-caring or child-placing staff members.....	3142

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2022 Edition of the **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

Title		Chapter	Regulation
806	KAR	050:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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The following agenda may not take into consideration all of the administrative regulations that may be deferred by promulgating agencies. Deferrals may be made any time prior to or during the meeting.



**Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Tuesday, June 14, 2022 at 1 p.m.
Annex Room 149**



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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

**Education Professional Standards Board
Administrative Certificates**

016 KAR 003:080. Career and technical education school principals.

PERSONNEL CABINET

Classified

101 KAR 002:095E. Classified service general requirements. (Filed with Ordinary) ("E" expires 01-10-2023)

General

101 KAR 006:020E. Kentucky Employees Charitable Campaign. ("E" expires 01-10-2023) ("E" expires 01-10-2023)

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:430. Emergency orders and hearings. (Amended After Comments) (Deferred from February)

Board of Dentistry

201 KAR 008:600. Mobile dental facilities and portable dental units. (Comments Received; SOC ext., due 06-15-2022)

Board of Embalmers and Funeral Directors

201 KAR 015:030E. Fees. (Filed with Ordinary) ("E" expires 01-02-2023)

201 KAR 015:040E. Examination. (Filed with Ordinary) ("E" expires 01-02-2023)

201 KAR 015:050E. Apprenticeship and supervision requirements. (Filed with Ordinary) ("E" expires 01-02-2023)

201 KAR 015:110E. Funeral establishment criteria. (Filed with Ordinary) ("E" expires 01-02-2023)

201 KAR 015:125E. Surface transportation permit. (Filed with Ordinary) ("E" expires 01-02-2023)

Board of Nursing

201 KAR 020:070E. Licensure by examination. (Filed with Ordinary) ("E" expires 01-01-2023)

201 KAR 020:085. Licensure periods and miscellaneous requirements.

201 KAR 020:110. Licensure by endorsement.

201 KAR 020:370. Applications for licensure.

Applied Behavior Analysis Licensing Board

201 KAR 043:010. Application procedures for licensure. (Deferred from February)

201 KAR 043:020. Application procedures for temporary licensure. (Not Amended After Comments) (Deferred from April)

201 KAR 043:030. Fees. (Deferred from February)

201 KAR 043:040. Code of ethical standards and standards of practice. (Amended After Comments) (Deferred from April)

201 KAR 043:050. Requirement for supervision. (Amended After Comments) (Deferred from April)

201 KAR 043:060. Complaint and disciplinary process. (Deferred from February)

201 KAR 043:071. Repeal of 201 KAR 043:070. (Deferred from February)

201 KAR 043:080. Renewals. (Amended After Comments) (Deferred from April)

201 KAR 043:090. Voluntary inactive and retired status. (Deferred from February)

201 KAR 043:100. Telehealth and telepractice. (Deferred from February)

Board of Emergency Medical Services

202 KAR 007:545E. License classifications. (Filed with Ordinary) ("E" expires 12-25-2022)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Wildlife

301 KAR 004:001. Selection of Fish and Wildlife Resources Commission nominees. (Deferred from November)

JUSTICE AND PUBLIC SAFETY CABINET

Department of State Police

Driver Training

502 KAR 010:010. Definitions. (Deferred from December)

502 KAR 010:020. Department facilities; facility inspection; conflict of interest. (Deferred from December)

502 KAR 010:030. Instructor's license. (Amended After Comments) (Deferred from February)

502 KAR 010:035. Commercial driver's license skill testing. (Deferred from December)

502 KAR 010:040. Training school facilities. (Amended After Comments) (Deferred from February)

VOLUME 48, NUMBER 12– JUNE 1, 2022

- 502 KAR 010:050. Contracts and agreements. (Deferred from December)
- 502 KAR 010:060. School advertising. (Deferred from December)
- 502 KAR 010:070. Training vehicle, annual inspection. (Amended After Comments) (Deferred from February)
- 502 KAR 010:080. License suspension, revocation, denial. (Deferred from December)
- 502 KAR 010:090. Procedure for denial, suspension, nonrenewal or revocation hearings. (Deferred from December)
- 502 KAR 010:110. Third-party CDL skills test examiner standards. (Deferred from December)
- 502 KAR 010:120. Hazardous materials endorsement requirements. (Deferred from December)

Concealed Deadly Weapons

- 502 KAR 011:010. Application for license to carry concealed deadly weapon. (Deferred from December)
- 502 KAR 011:060. License denial and reconsideration process. (Deferred from December)
- 502 KAR 011:070. License revocation and suspension notice and reinstatement process. (Deferred from December)

Law Enforcement Officers Safety Act of 2004

- 502 KAR 013:010. Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers. (Amended After Comments) (Deferred from February)
- 502 KAR 013:030. Range qualification for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers. (Deferred from December)
- 502 KAR 013:040. Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers. (Deferred from December)
- 502 KAR 013:050. Replacement of licenses to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers. (Deferred from December)
- 502 KAR 013:060. Change of personal information regarding certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers. (Deferred from December)
- 502 KAR 013:080. Incomplete application for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers. (Deferred from December)

Criminal History Record Information System

- 502 KAR 030:010. Criminal History Record Information System. (Amended After Comments) (Deferred from February)
- 502 KAR 030:020. Arrest and disposition reporting procedure. (Amended After Comments) (Deferred from February)
- 502 KAR 030:030. Audit of Criminal History Record Information System. (Amended After Comments) (Deferred from February)
- 502 KAR 030:050. Security of centralized criminal history record information. (Amended After Comments) (Deferred from February)
- 502 KAR 030:060. Dissemination of criminal history record information. (Deferred from December)
- 502 KAR 030:070. Inspection of criminal history record information by record subject. (Amended After Comments) (Deferred from February)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Department of Workforce Investment

Office of Vocational Rehabilitation

- 781 KAR 001:010. Office of Vocational Rehabilitation appeal procedures. (Deferred from November)
- 781 KAR 001:020. General provisions for operation of the Office of Vocational Rehabilitation. (Deferred from November)
- 781 KAR 001:030. Order of selection and economic need test for vocational rehabilitation services. (Deferred from November)
- 781 KAR 001:040. Rehabilitation technology services. (Deferred from November)
- 781 KAR 001:050. Carl D. Perkins Vocational Training Center. (Deferred from November)

Office for the Blind

- 782 KAR 001:010. Kentucky Business Enterprises. (Deferred from November)
- 782 KAR 001:070. Certified driver training program. (Deferred from November)

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)

LABOR CABINET

Department of Workplace Standards

Labor Standards; Wages and Hours

- 803 KAR 001:005. Employer-employee relationship. (Deferred from September)
- 803 KAR 001:025. Equal pay provisions, meaning and application. (Deferred from September)
- 803 KAR 001:060. Overtime pay requirements. (Deferred from September)
- 803 KAR 001:063. Trading time. (Deferred from September)
- 803 KAR 001:065. Hours worked. (Deferred from September)
- 803 KAR 001:066. Recordkeeping requirements. (Deferred from September)
- 803 KAR 001:070. Executive, administrative, supervisory or professional employees; salesmen. (Deferred from September)
- 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)

Occupational Safety and Health

- 803 KAR 002:402. General safety and health provisions. (Deferred from May)
- 803 KAR 002:411. Scaffolds. (Deferred from May)
- 803 KAR 002:419. Demolition. (Deferred from May)
- 803 KAR 002:445. Confined spaces in construction. (Deferred from May)

Administration

- 803 KAR 005:005. Employee access to or use of federal tax information; required criminal background check.

Department of Workers' Claims

- 803 KAR 025:195E. Utilization review, appeal of utilization review decisions, and medical bill audit. (Filed with Ordinary) ("E" expires 01-10-2023)

PUBLIC PROTECTION CABINET

Department of Insurance

Health Insurance Contracts

- 806 KAR 017:350. Life insurance and managed care. (Deferred from October)

Horse Racing Commission

Licensing

- 810 KAR 003:020. Licensing of racing participants.

Flat and Steeplechase Racing

- 810 KAR 004:010. Horses.
- 810 KAR 004:030. Entries, subscriptions, and declarations.
- 810 KAR 004:060. Objections and complaints.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

State Health Plan

- 900 KAR 005:020E. State Health Plan for facilities and services. ("E" expires 11-26-2022) (Filed with Ordinary) (Emergency Amended After Comments) (Deferred from May)
- 900 KAR 005:020. State Health Plan for facilities and services. (Filed with Emergency) (Comments Received; SOC ext., due 6-15-2022) (Deferred from May)

Certificate of Need

- 900 KAR 006:075E. Certificate of need nonsubstantive review. ("E" expires 11-26-2022) (Filed with Ordinary) (Emergency Amended After Comments)
- 900 KAR 006:075. Certificate of Need nonsubstantive review. (Filed with Emergency) (Comments Received; SOC ext., due 6-15-2022)

Essential Personal Care Visitor Program

- 900 KAR 014:010E. Essential personal care visitor programs; visitation guidelines. (Filed with Ordinary) ("E" expires 11-18-2022) (Emergency Amended After Comments)
- 900 KAR 014:010. Essential personal care visitor programs; visitation guidelines. (Filed with Emergency)

Department for Public Health

Health Services and Facilities

- 902 KAR 020:016. Hospitals; operations and services. (Amended After Comments)
- 902 KAR 020:018. Operation and services; end-stage renal disease facilities. (Not Amended After Comments) (Deferred from May)
- 902 KAR 020:106. Operation and services; ambulatory surgical center. (Amended After Comments)

Early Intervention System

- 902 KAR 030:120. Evaluation and eligibility. (Filed with Emergency)

Office of Inspector General

- 906 KAR 001:110. Critical access hospital services. (Amended After Comments)

VOLUME 48, NUMBER 12– JUNE 1, 2022

**Department for Medicaid Services
Outpatient Pharmacy Program**

907 KAR 023:020. Reimbursement for outpatient drugs. (Filed with Emergency - Emergency expired 4-26-2022) (Amended After Comments) (Deferred from December)

**Department for Behavioral Health, Developmental and Intellectual Disabilities
Institutional Care**

908 KAR 003:010. Patient's rights.

**Department for Community Based Services
Child Welfare**

922 KAR 001:310. Standards for child-placing agencies.

922 KAR 001:315. Standards for child-placing agencies placing children who are not in the custody of the cabinet.

922 KAR 001:340. Standards for independent living programs.

922 KAR 001:360. Private child care placement, levels of care, and payment. (Filed with Emergency) (Amended After Comments)

922 KAR 001:530. Post-adoption placement stabilization services. (Deferred from April)

Adult Services

922 KAR 005:070. Adult protective services. (Amended After Comments)

3. REGULATIONS REMOVED FROM JUNE'S AGENDA

BOARDS AND COMMISSIONS

~~Board of Emergency Medical Services~~

~~202 KAR 007:560E. Ground vehicle staff. (Filed with Ordinary) ("E" expires 12-25-2022) (Withdrawn by Agency)~~

**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
31 KAR 3:031E

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Constitution of Kentucky requires free and fair elections in the Commonwealth; KRS 118.025(3) sets May 17, 2022 as the statutory date for the primary nomination of candidates, while KRS 118.025(4) sets November 8, 2022 as the date for the regular election. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by state statute to promote free and fair elections are in effect during the upcoming primary and regular election. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)

31 KAR 3:031E. Voting precinct and address of overseas voter whose last place of residence in the Commonwealth is no longer a recognized residential address.

EFFECTIVE: April 28, 2022

RELATES TO: KRS 117A.010(1)(e), 117A.040

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117A.030(2), 117A.040(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117A.040(2) requires the State Board of Elections to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A. This administrative regulation establishes the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address.

Section 1. Definition. "Overseas voter" is defined by KRS 117A.010(6).

Section 2. Voting Precinct and Address of Overseas Voter Whose Last Place of Residence in the Commonwealth is No Longer a Recognized Residential Address. If the last place of residence in the Commonwealth of Kentucky of an overseas voter who is eligible to vote in the Commonwealth, or the last place of residence of the parent or legal guardian of a voter described by KRS 117A.010(1)(e), is no longer a recognized residential address, the county clerk shall:

(1) In consultation with federal, state and local government agencies, as necessary, determine and designate in the statewide voter registration database the voting precinct, school board district, city, and ward, if any, in which the voter's last place of residence, or the last place of residence of the parent or legal guardian of a voter described by KRS 117A.010(1)(e), would have been located if the address were still a recognized residential

address; and

(2) Designate the voter's residential address in the statewide voter registration database as "Overseas."

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this temporary emergency administrative regulation shall be held on June 28, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a voting precinct and voter registration address for overseas voters whose last place of residence in the Commonwealth is no longer a recognized residential address.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given KRS 117A.040(2) requires the State Board of Elections to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117A.040(2).

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all the State Board of Elections, the office of the Secretary of State, county clerks, and overseas voters as defined by KRS 117A.010(6).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. To comply with this administrative regulation, county clerks will need to determine and designate in the statewide voter registration database the voting precinct, school board district, city, and ward, if any, in which the voter's last place of residence, or the last place of residence of the parent or legal guardian of a voter described by KRS 117A.010(1)(e), would have been located if the address were still a recognized residential address. The State Board of Elections and Secretary of State will need to make sure that overseas voters are aware of this regulation. Overseas voters will have to take no action outside of providing the address.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections and the office of the Secretary of State will be impacted by this administrative regulation. At the local level, county clerks 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. KRS117A.040 requires and authorizes the actions taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

STATEMENT OF EMERGENCY
31 KAR 4:071E

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Constitution of Kentucky requires free and fair elections in the Commonwealth; KRS 118.025(3) sets May 17, 2022 as the statutory date for the primary nomination of candidates, while KRS 118.025(4) sets November 8, 2022 as the date for the regular election. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by state statute to promote free and fair elections are in effect during the upcoming primary and regular election. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)

31 KAR 4:071E. Recanvass procedures.

EFFECTIVE: April 28, 2022

RELATES TO: KRS 117.305, 118.425, 242.120

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.305(5), (6), (7), 242.120(3), (4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.305(5) and KRS 242.120(3) require the State Board of Elections to prescribe forms to be used by county boards of elections to report all recanvassed votes, KRS 117.305(6) and KRS 242.120(4) require that the board promulgate administrative regulations to set reporting standards for recanvass reports, and KRS 117.305(7) and KRS 242.120(5) require that the board promulgate administrative regulations to establish the proper procedures for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky. This administrative regulation establishes the reporting forms to be used in the event of a recanvass, reporting standards for an election if a recanvass is requested and received in a timely manner, and establishes the proper procedures for conducting a recanvass on the approved voting systems in use in Kentucky.

Section 1. (1) The Recanvass of Official Count and Record of Election Totals form, SBE 49A, shall be used by the county board of elections to report all recanvassed votes, except for local option elections.

(2) The Recanvass of Official Count and Record of Election Totals for Local Option Election form, SBE 49B, shall be used by the county board of elections to report recanvassed votes for local option elections.

(3) The county board of elections shall state the name of the county in which the recanvass is being conducted, the date of the report, the date of the election, the office for which the recanvass is being made, the name of each candidate for the office being recanvassed, and the machine votes, absentee votes, provisional votes and total votes for each candidate. The report shall be signed by each member of the county board of elections.

(4) For a recanvass of a local option election, the county board of elections shall state the name of the county in which the recanvass is being conducted, the date of the report, the date of the local option election, the proposition for which the recanvass is being made, the names of the leaders of the committees favoring or opposing the proposition being recanvassed, and the machine votes, absentee votes, and vote totals for "yes" or "no" votes. The report shall be signed by each member of the county board of

elections.

Section 2. (1) The county board of elections shall file its recanvass report, SBE 49A, immediately upon completion of the recanvass for those vote totals reported to the Secretary of State, pursuant to KRS 118.425(3).

(2) The county board of elections shall file its recanvass report, SBE 49A, immediately upon completion of the recanvass for the vote totals reported to the county clerk, pursuant to 118.425(2).

(3) The county board of elections shall file its recanvass report for a local option election, SBE 49B, immediately upon completion of the recanvass for the vote totals reported to the county clerk, pursuant to KRS 242.110.

Section 3. If KRS 117.305(1) or KRS 242.120(2)(a) requires a recanvass, the provisions established in this section shall apply.

(1) In a general election, the county board of elections shall only check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

(2) In a partisan primary, the county board of elections shall only check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate of the same political party seeking the same office.

(3) In a nonpartisan election, the county board of elections shall only check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

(4) In a local option election, the county board of elections shall check and tabulate the "yes" and "no" votes.

Section 4. A county board of elections shall recanvass the votes recorded depending on the machine and voting method utilized, as follows:

(1) If an electronic voting system with a central tabulation system is used, the recanvass shall be taken:

(a) By clearing the system, such as by setting the tabulation system to zero and retabulating the votes recorded on the memory cartridges on election day by using the central tabulation system; or

(b) By comparing the results printout printed from each voting machine on election day with the county-wide recapitulation sheet.

(2) If an electronic voting system without a central tabulation system is used, the recanvass shall be taken by comparing the results printout printed from each voting machine on election day with the county-wide recapitulation sheet.

(3) Paper ballots, which were judged to be valid by the county board of elections on election day and which were not counted using a central tabulation system but were hand-counted on election day, shall be recanvassed by utilizing the same procedure actually used to count those paper ballots on election day following the procedures for the uniform definition of a vote established by 31 KAR 6:030.

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

(a) "Recanvass of Official Count and Record of Elections Totals", SBE 49A, 04/22; and

(b) "Recanvass of Official Count and Record of Elections Totals for Local Option Election", SBE 49B, 04/22.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this temporary emergency administrative regulation shall be held on June 28, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reporting forms to be used in the event of a recanvass, reporting standards for an election if a recanvass is requested and received in a timely manner, and establishes the proper procedures for conducting a recanvass on the approved voting systems in use in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given KRS 117.305(5) and KRS 242.120(3) require the State Board of Elections to prescribe forms to be used by county boards of elections to report all recanvassed votes, KRS 117.305(6) and KRS 242.120(4) require that the board promulgate administrative regulations to set reporting standards for recanvass reports, and KRS 117.305(7) and KRS 242.120(5) require that the board promulgate administrative regulations to establish the proper procedures for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.305(5), KRS 242.120(3), 117.305(6), 242.120(4), 117.305(7), and 242.120(5).

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all the State Board of Elections and county boards of election.

(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 State Board of Elections will need to make available the required forms; county boards of election will need to complete and submit them.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they

will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

Contact person: Taylor Brown

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, county boards of election 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 117.305(5), KRS 242.120(3), KRS 117.305(6), KRS 242.120(4), KRS 117.305(7), and KRS 242.120(5) require and authorize the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

**STATEMENT OF EMERGENCY
31 KAR 4:131E**

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Constitution of Kentucky requires free and fair elections in the Commonwealth; KRS 118.025(3) sets May 17, 2022 as the statutory date for the primary nomination of candidates, while KRS 118.025(4) sets November 8, 2022 as the date for the regular election. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by state statute to promote free and fair elections are in effect during the upcoming primary and regular election. This emergency administrative regulation is temporary in nature will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

**STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)**

31 KAR 4:131E. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically.

EFFECTIVE: April 28, 2022
RELATES TO: KRS 117.085, 117.086, 117A.030, 117A.080,

117A.120, 117A.130, 52 U.S.C. 20302

STATUTORY AUTHORITY: KRS 117.015(1)(a), KRS 117.079, 117.086(1), 117A.030(2), (4)-(6), 117A.130, 52 U.S.C. 20302(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. KRS 117.086(1) authorizes the State Board of Elections to promulgate administrative regulations establishing security requirements for the transmission of voted absentee ballots. 52 U.S.C. 20302(e) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the State Board of Elections to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS 117A.030(5) requires the State Board of Elections to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.030(6) requires the State Board of Elections to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. KRS 117A.130 requires the State Board of Elections, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A. This administrative regulation establishes the procedures for the county clerk to follow when transmitting a military-overseas ballot to a covered voter via facsimile or electronically and for a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporates by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implements the electronic free-access system pursuant to KRS 117A.130.

Section 1. Definitions. (1) "Covered voter" is defined by KRS 117A.010(1).

(2) "Federal postcard application" is defined by KRS 117A.010(3).

(3) "Instructions to Voter" means the Instructions for Voting to a Covered Voter Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot, SBE 46A.

(4) "Military-overseas ballot" is defined by KRS 117A.010(5).

(5) "Transmission sheet" means the Official Election Materials – Electronic Transmission Sheet prescribed by the Federal Voting Assistance Program.

Section 2. Delivering a Military-Overseas Ballot to a Covered Voter Via Facsimile or Electronically. (1) If the county clerk receives a properly completed federal postcard application from a covered voter who is eligible to vote in the jurisdiction and who requests that balloting materials be transmitted to the covered voter via facsimile or electronically, then for each election in which the covered voter is eligible to vote, the county clerk shall:

(a) Prepare a copy of the military-overseas ballot and mark the original, blank military-overseas ballot, "Faxed to Covered Voter," if

the covered voter requested the military-overseas ballot to be transmitted to the covered voter via facsimile, or "Electronically Transmitted to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter electronically;

(b) Complete the county clerk's portion of the Instructions to Voter;

(c) If the covered voter has requested that the blank absentee ballot be transmitted through the Federal Voting Assistance Program, complete the Transmission Sheet; and

(d) Transmit the copy of the military-overseas ballot, Instructions to Voter, Voter Verification and Declaration, Voter Assistance Form, and Transmission Sheet, if the covered voter has requested that the military-overseas ballot be transmitted through the Federal Voting Assistance Program, to the covered voter via the method requested by the covered voter.

(2) The original blank military-overseas ballot shall be retained and not reused.

(3) A properly completed federal postcard application shall be treated as an application for a military-overseas ballot for all elections held after the date of the application through the next regular election or December 31 of the year of the application, whichever is later, unless the covered voter specifies a shorter time period.

Section 3. Ballot Security Requirements for Returning a Military-Overseas Ballot Transmitted to a Covered Voter Via Facsimile or Electronically. When a covered voter receives a military-overseas ballot via facsimile or electronically:

(1) If the covered voter requires assistance in voting, the covered voter and the person who assists the covered voter shall complete the Voter Assistance Form, except the "Section to be Completed by Precinct Election Officer";

(2) The covered voter shall mark the military-overseas ballot and seal it in an envelope;

(3) The covered voter shall complete and sign the Voter Verification and Declaration;

(4) The covered voter shall place the Voter Verification and Declaration, Voter Assistance Form, if the voter received assistance in voting, and the envelope containing the military-overseas ballot in a separate envelope and seal it;

(5) The covered voter shall print the covered voter's name, voting address, and precinct number on the back of the outer envelope;

(6) The covered voter shall sign across the back flap of the outer envelope;

(7) The covered voter shall print "Absentee Ballot" on the front of the outer envelope, without obstructing the address area; and

(8) The covered voter shall mail the envelope to the county clerk.

Section 4. Electronic Free-Access System. Each county clerk shall either participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received.

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

(a) "Instructions for Voting to a Covered Voter Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot", SBE 46A, rev. July 2014;

(b) "Voter Assistance Form", SBE 31, 04/2022; and

(c) "Voter Verification and Declaration", SBE 46B, rev. July 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Filed with the concurrence of the Attorney General

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this temporary emergency administrative regulation shall be held on June 28, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the county clerk to follow when transmitting a military-overseas ballot to a covered voter via facsimile or electronically and for a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporates by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implements the electronic free-access system pursuant to KRS 117A.130.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010; 52 U.S.C. 20302(e) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters; KRS 117A.030(4) requires the State Board of Elections to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A; KRS 117A.030(5) requires the State Board of Elections to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth; KRS 117A.030(6) requires the State Board of Elections to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot; KRS 117A.130 requires the State Board of Elections, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. KRS 117.086(1) authorizes the State Board of Elections to promulgate administrative regulations establishing security requirements for the transmission of voted absentee ballots. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.079, KRS 117A.030(4), KRS 117A.030(5), KRS 117A.030(6), KRS 117A.130

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all the State Board of Elections, county clerks, covered voters as defined by KRS 117A.010(1), and those who may assist covered voters.

(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 State Board of Elections and county clerks will need to make available the required items; covered voters and those that may assist them will need to take the described steps to receive and return a ballot.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can

be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, county clerks 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 117.015(1)(a), KRS 117.079, KRS 117.086(1), 52 U.S.C. 20302(e), and KRS 117A.130 require and authorize the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the

regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

**STATEMENT OF EMERGENCY
31 KAR 4:141E**

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Constitution of Kentucky requires free and fair elections in the Commonwealth; KRS 118.025(3) sets May 17, 2022 as the statutory date for the primary nomination of candidates, while KRS 118.025(4) sets November 8, 2022 as the date for the regular election. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by state statute to promote free and fair elections are in effect during the upcoming primary and regular election. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

**STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)**

31 KAR 4:141E. Submission of the federal postcard application via electronic mail.

EFFECTIVE: April 28, 2022

RELATES TO: KRS 116.045(4)(e), 117.079, 117.085, 117A.030(4), 117A.050(3), 117A.060(3), 52 U.S.C. 20302(e)

STATUTORY AUTHORITY: KRS 116.045(4)(e), 117.079, 117.086(1), 52 U.S.C. 20302(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 52 U.S.C. 20302(e) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of

registration for any person to register to vote or change his or her party affiliation. KRS 117.086(1) authorizes the board to promulgate administrative regulations establishing security requirements for the transmission of voted absentee ballots. This administrative regulation authorizes covered voters to submit federal postcard applications via electronic mail and establishes the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail.

Section 1. Definitions. (1) "Covered voter" is defined by KRS 117A.010(1).

(2) "Federal postcard application" is defined by KRS 117A.010(3).

(3) "Military-overseas ballot" is defined by KRS 117A.010(5).

Section 2. County Clerk's Electronic Mailing Address. The county clerk shall use the county clerk's electronic mailing address provided or recognized by the Kentucky Department of Transportation to send to and receive from covered voters: voter registration applications, military-overseas ballot applications, military-overseas ballots, and related voting, balloting, and election information.

Section 3. Federal Postcard Applications Submitted Via Electronic Mail. (1) A covered voter may submit a federal postcard application to the county clerk via electronic mail to register, reregister, and to apply for a military-overseas ballot.

(2) The county clerk shall treat a federal postcard application submitted by a covered voter via electronic mail in the same manner as a federal postcard application submitted via the electronic transmission system established under KRS 117A.030(4).

Filed with the concurrence of the Attorney General

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this temporary emergency administrative regulation shall be held on June 28, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation authorizes covered voters to submit federal postcard applications via electronic mail and establishes the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010; 52 U.S.C. 20302(e) requires the states

to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters; KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. KRS 117.086(1) authorizes the board to promulgate administrative regulations establishing security requirements for the transmission of voted absentee ballots. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.079 and 52 U.S.C. 20302(e).

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all the State Board of Elections, county clerks, and covered voters as defined by KRS 117A.010(1).

(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 State Board of Elections will need to make clerks and covered voters aware of the availability of the process. County clerks will need to make available the email system. Covered voters will need to submit the applications via email.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be

nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, county clerks 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 117.015(1)(a), KRS 117.079, 52 U.S.C. 20302(e), KRS 116.045(4)(e), and KRS 117.086(1) require and authorize the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation

generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

**STATEMENT OF EMERGENCY
31 KAR 4:196E**

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Constitution of Kentucky requires free and fair elections in the Commonwealth; KRS 118.025(3) sets May 17, 2022 as the statutory date for the primary nomination of candidates, while KRS 118.025(4) sets November 8, 2022 as the date for the regular election. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by state statute to promote free and fair elections are in effect during the upcoming primary and regular election. This emergency administrative regulation is temporary in nature will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

**STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)**

31 KAR 4:196E. Consolidation of Precincts and Precinct Election Officers.

EFFECTIVE: April 28, 2022

RELATES TO: KRS 117.066

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.066(3) requires the State Board of Elections to promulgate administrative regulations to provide for a form on which a county board of elections may petition the State Board of Elections to allow for the consolidation of precincts and

the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote. This administrative regulation establishes that form.

Section 1. A county board of elections shall petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote, by filing with the State Board of Elections, the "Petition to Consolidate Precincts and Precinct Election Officers" Form SBE 74 no later than ninety (90) days before a primary or general election, or ten (10) days after a proclamation is issued under KRS 118.710 or 118.720, or a writ of election is issued under KRS 118.730. The State Board of Elections shall reserve the right to request, at any time, from any county, a resubmission of any petition to consolidate precincts and precinct election officers.

Section 2. The submission of Form SBE 74 shall be accompanied by no less than one map scalable to a sheet of 8.5 x 11 inch paper of the county showing the location of any consolidated precincts comprising a county-wide vote center.

Section 3. Incorporated by Reference. (1) Petition to Consolidate Precincts and Precinct Election Officers, Form SBE 74, 04/2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on June 28, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the form used by county board of elections to petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct officers at any voting location where voters of more than one (1) precinct vote, as required by KRS 117.066(3).

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations under KRS 117.066.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.066(3), as amended by Kentucky Acts Chapter 197.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all county boards of election that wish to consolidate precincts and precinct election officers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, a county board of elections will need to complete and submit a form to the State Board of Elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost only the amount necessary to print a standard form and transmit it to the State Board through conventional means.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit county boards of election by standardizing the procedure by which precincts and precinct election officers are consolidated.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 74.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the Form SBE 74 that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, all local boards of elections 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. KRS117.066(3), as amended by Kentucky Acts Chapter 197, requires and authorizes the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of \$500,000 or more on state or local government or regulated entities, in aggregate.

**STATEMENT OF EMERGENCY
31 KAR 4:201E**

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Constitution of Kentucky requires free and fair elections in the Commonwealth; KRS 118.025(3) sets May 17, 2022 as the statutory date for the primary nomination of candidates, while KRS 118.025(4) sets November 8, 2022 as the date for the regular election. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by state statute to promote free and fair elections are in effect during the upcoming primary and regular election. This emergency administrative regulation is temporary in nature will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

**STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)**

31 KAR 4:201E. Chain of custody for records during an election contest.

EFFECTIVE: April 28, 2022

RELATES TO: KRS 120.205, 120.215

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 120.205 and KRS 120.215 require the State Board of Elections to promulgate administrative regulations to provide for a form on which documents any individuals transporting all voting equipment, ballots, boxes, precinct rosters, and other voting records related to an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly. This administrative regulation establishes that form.

Section 1. In the event that a board is established under KRS 120.205 or KRS 120.215 to try a contested election of a Governor and Lieutenant Governor or a member of the General Assembly, the possession of all components of a voting system, ballots, ballot boxes, precinct rosters, and any other voting records sent for by the board shall not transfer unless documented in writing on Form SBE 75, "Election Contest Chain-of-Custody."

Section 2. Incorporated by Reference. (1) Election Contest Chain-of-Custody, Form SBE 75, 04/2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on June 28, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the form which documents any individuals transporting all voting equipment, ballots, boxes, precinct rosters, and other voting records related to an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly, as required by KRS 120.205 and KRS 120.215.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations under KRS 120.205 and KRS 120.215.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 120.205 and KRS 120.215, as amended by Kentucky Acts Chapter 197.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect those involved in the administration of an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, those transporting election materials will need to document themselves on a standardized form anytime the materials are transferred.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost only the amount necessary to print a standardized form through conventional means.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit those involved in administering an election contest by providing the complete history of the movement of any related election materials.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 75.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the Form SBE 75 that are

necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Elections and the General Assembly will be impacted by this administrative regulation, as well as any law enforcement agency requested to transport the election materials required for the contest.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 120.205 and KRS 120.215, as amended by Kentucky Acts Chapter 197, require and authorize the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State

Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

STATEMENT OF EMERGENCY
31 KAR 4:210E

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Constitution of Kentucky requires free and fair elections in the Commonwealth; KRS 118.025(3) sets May 17, 2022 as the statutory date for the primary nomination of candidates, while KRS 118.025(4) sets November 8, 2022 as the date for the regular election. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by state statute to promote free and fair elections are in effect during the upcoming primary and regular election. This emergency administrative regulation is temporary in nature will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR Governor
KAREN SELLERS Director

STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)

31 KAR 4:210E. Establishment of risk-limiting audit pilot program.

EFFECTIVE: April 28, 2022

RELATES TO: KRS 117.383

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.383(8)-(9) require the State Board of Elections to promulgate administrative regulations related to the audit of elections and specifically calls for the establishment of a risk-limiting audit pilot program. This administrative regulation establishes a working-group to conduct and report on such a pilot program.

Section 1. Beginning March 2022 there shall be a working-group formed to establish recommendations for post-election audits in the counties of the Commonwealth. The working-group shall consist of members representing the State Board of Elections, the office of the Secretary of State, at least six (6) county clerks, an individual recognized to be an election auditing expert, and any other individuals the working-group may desire to include. The working-group shall, in the six (6) counties represented on the working-group, conduct a risk-limiting audit pilot program during the 2022 primary nomination of candidates and regular election. The working-group shall report any results, recommendations, or findings, regarding the implementation of risk-limiting audits to the State Board of Elections following the 2022 primary nomination of candidates and regular election.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 29, 2022

FILED WITH LRC: April 29, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this temporary emergency administrative regulation shall be held on June 28, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a working-group to conduct and report on a risk-limiting audit pilot program for the 2022 primary and general elections.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations under KRS 117.383.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.383, as amended by Kentucky Acts Chapter 197.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all the State Board of Elections, the office of the Secretary of State, at least six (6) county clerks, and any other individuals that may participate in the working-group.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, the members of the working-group will need to participate in as-scheduled meetings and produce findings after the primary and general elections of 2022.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: Any continuing cost would only come at the recommendation of the working-group and further implementation through companion administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections and the office of the Secretary of State will be impacted by this administrative regulation. At the local level, at least six (6) county clerks 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 117.383, as amended by Kentucky Acts Chapter 197, requires and authorizes the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate

any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

**STATEMENT OF EMERGENCY
31 KAR 5:011E**

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Constitution of Kentucky requires free and fair elections in the Commonwealth; KRS 118.025(3) sets May 17, 2022 as the statutory date for the primary nomination of candidates, while KRS 118.025(4) sets November 8, 2022 as the date for the regular election. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by state statute

to promote free and fair elections are in effect during the upcoming primary and regular election. This emergency administrative regulation is temporary in nature will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Executive Director

**STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)**

31 KAR 5:011E. Use of the federal write-in absentee ballot.

EFFECTIVE: April 28, 2022

RELATES TO: KRS 117.079, 117.086(3), 117A.050(2), 117A.060(3), 117A.100, 117A.130, 117A.160(1), 52 U.S.C. 20302
STATUTORY AUTHORITY: KRS 117.079, 117A.030(2), 117A.130, 52 U.S.C. 20302(a)(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 52 U.S.C. 20302(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for federal office. KRS 117A.130 requires the State Board of Elections, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A. This administrative regulation establishes the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130.

Section 1. Definitions. (1) "Covered Voter" is defined by KRS 117A.010(1).

(2) "Federal write-in absentee ballot" is defined by KRS 117A.010(4).

(3) "Military-overseas ballot" is defined by KRS 117A.010(5).

Section 2. Suspension of Provisions of 31 KAR 6:030. The requirements of 31 KAR 6:030, Uniform Definition of a Vote, Section 5(2)(a) and Section 6(1), (2), and (9), shall be suspended for the purposes of this administrative regulation.

Section 3. Receipt of Federal Write-in Absentee Ballot. Upon receiving a federal write-in absentee ballot, the county clerk shall:

(1) Not open the inner security envelope;

(2) Examine the voter's declaration/application accompanying the federal write-in absentee ballot to determine whether it was submitted by a covered voter for the purpose of registering to vote or requesting an absentee ballot;

(3) If the voter's declaration/application accompanying the federal write-in absentee ballot was submitted by a covered voter for the purpose of registering to vote or requesting an absentee ballot, process the application in the same manner as a federal postcard application;

(4) Enclose the voter's declaration/application accompanying the federal write-in absentee ballot and the inner security envelope in a separate envelope and label the outer envelope "FWAB"; and

(5) Deposit the outer envelope in a locked ballot box pursuant to KRS 117.086(3).

Section 4. Receipt of State Ballot Overrides Federal Write-in Absentee Ballot. (1) The federal write-in absentee ballot shall remain in the locked ballot box pursuant to KRS 117.086(3) and

not be opened until after the deadline for receipt of the state absentee ballot.

(2) If the county clerk receives no later than the deadline for receipt of the state absentee ballot a valid and voted state absentee ballot from a covered voter from whom the county clerk also receives a federal write-in absentee ballot, the county clerk shall not unseal the inner security envelope containing the federal write-in absentee ballot and shall write on the inner security envelope containing the federal write-in absentee ballot, "Cancelled because state absentee ballot received."

Section 5. Electronic Free-Access System. Each county clerk shall either participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 29, 2022

FILED WITH LRC: April 29, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this temporary emergency administrative regulation shall be held on June 28, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010; 52 U.S.C. 20302(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for federal office; KRS 117A.130 requires the State Board of Elections, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.079 and 52 U.S.C. 20302(a)(3).

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all the State Board of Elections and county clerks.

(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 State Board of Elections will need to maintain an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received. County clerks will need to participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, county clerks 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 117.015(1)(a), KRS 117.079, 52 U.S.C. 20302(a)(3), and KRS 117A.030(2) require and authorize the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a

major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

**STATEMENT OF EMERGENCY
31 KAR 5:026E**

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Constitution of Kentucky requires free and fair elections in the Commonwealth; KRS 118.025(3) sets May 17, 2022 as the statutory date for the primary nomination of candidates, while KRS 118.025(4) sets November 8, 2022 as the date for the regular election. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by state statute to promote free and fair elections are in effect during the upcoming primary and regular election. This emergency administrative regulation is temporary in nature will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation. This emergency administrative regulation differs from the previously filed version in that it adds the entirety of Section 9, revises the language regarding Sheriffs and county boards in Section 3, and updates associated dates.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

**STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)**

31 KAR 5:026E. Ballot standards and election security.

EFFECTIVE: May 11, 2022
RELATES TO: KRS 117.001, 117.085, 117.086, 117.087, 117.145, 117.225, 117.228
STATUTORY AUTHORITY: KRS 117.015(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. Several Kentucky Revised Statutes require the State Board of Elections to promulgate administrative regulations that provide for measures that establish standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner. This administrative regulation provides for those measures.

Section 1. In addition to the requirements for printed ballots outlined in KRS 117.145, ballots caused to be printed by the county clerk of each county shall meet quality and size standards specific to the voting systems certified by both the State Board of Elections and the United States Election Assistance Commission.

Section 2. The outer envelope of all mail-in absentee ballots shall bear a barcode or other label that is unique to the individual voter and capable of being read by an electronic optical scanner. The unique barcode or label for each mail-in absentee ballot outer envelope shall be issued by the State Board of Elections.

Section 3. Upon the time of certification of each candidate and each question to be voted upon, all pre-printed paper ballots shall

be secured by the county clerk of each county, under lock and key, in an area under the direct control of the county clerk and approved by the county board of elections. The possession of all pre-printed ballots shall be accounted for on SBE Form 76, "Ballot Reconciliation Statement." Upon the need for paper ballots to be printed at a county clerk's office, an accounting of the printed ballots shall be made on either the SBE Form 76, "Ballot Reconciliation Statement" or by the printing equipment. Upon the transfer of ballots from the area under the direct control of the county clerk to a polling location, the transfer shall be noted on the SBE Form 76, "Ballot Reconciliation Statement." Beginning with the casting of ballots during the period described in KRS 117.085(2), each voted ballot shall remain in a locked and sealed receptacle, until the conclusion of the period described in KRS 117.295(1). At the conclusion of each day of voting, an accounting of the number of all voted, unvoted, and spoiled ballots shall be recorded on the SBE Form 76, "Ballot Reconciliation Statement." All ballots and election materials not secured in an area under the direct control of the county clerk after the close of polls shall be secured at the voting location in a secure manner, based upon the advice and recommendations of the county board of elections and the sheriff from the time described in KRS 117.085(2) until the conclusion of voting on the day of an election. As mail-in absentee ballots are received by county clerks, they shall have their unique barcode or label scanned. Upon each mail-in absentee ballot being processed, the unique barcode or label shall be scanned again. If a mail-in absentee ballot is found to be without the need for a signature cure, or a mail-in absentee ballot has been returned along with a completed SBE Form 77, "Missing or Discrepant Mail-in Absentee Signature," the ballot shall be recorded into an optical scanner, to be deposited in a locked and sealed receptacle for the period described in KRS 117.295(1). Any completed SBE Form 76, "Ballot Reconciliation Statement" shall be turned over to the local Commonwealth's Attorney along with any other materials required under KRS 117.365.

Section 4. Any voter who is disabled may request a mail-in absentee ballot via an online accessible ballot portal which shall conform to web accessible design standards as set forth by the W3C Web Accessibility Initiative.

Section 5. Upon receipt of a valid mail-in ballot request, through the online request portal or other valid request method, the request of the voter shall be noted in the Voter Registration System, and reflected in the electronic pollbooks used by precinct election officers. Should a voter noted to have requested a mail-in absentee ballot appear at a polling location in order to vote in-person, the precinct election officer shall communicate with the county clerk, who shall make a determination as to whether the requested mail-in absentee ballot has been completed and returned as a cast ballot by the voter. If the mail-in absentee ballot is found to have been completed and returned as a cast ballot, the voter shall not be permitted to cast an in-person vote. If the mail-in absentee ballot is found not to have been completed and returned as a cast ballot and the ballot has been returned to the county clerk no later than seven (7) days prior to the date of the election as required by KRS 117.085(8), the county clerk shall immediately cancel the issued ballot in the Voter Registration System and allow the voter to cast an in-person ballot after the voter completes Form SBE 32, "Oath of Voter," copies of which shall be forwarded to the Commonwealth's Attorney.

Section 6. A voter, or an individual identified by KRS 117.0861(1), may deliver a mail-in absentee ballot to the office of the county clerk in the county where the voter is registered, or to a secure drop-off location if one is maintained by the county clerk in the county where the voter is registered, rather than mailing the ballot via the United States Postal Service. Any county choosing to use a receptacle for ballot drop-off other than a drop-box provided by the State Board of Elections, must formally seek the State Board of Elections' approval of the receptacle before any ballot shall be allowed to be deposited inside. Any county choosing to utilize a drop-off receptacle, including those provided by the State

Board of Elections, shall inform the State Board of Elections of the number of receptacles being used, the type of each receptacle being used, and the location of each drop-off location. Any receptacle located outside a County Clerk's Office shall be placed in a well-lit, easily accessible location, be bolted down, and be under video surveillance at all times. Any drop-box located inside, shall be under direct supervision of the staff of the county clerk at all times that it is accessible to the public. All drop-boxes used for the receipt of ballots shall be clearly marked as for use by voters in the election, so as to differentiate the drop-box from any other that may be in use in the area. Any other non-elections related drop-box in use by a county clerk for any other official business shall clearly indicate that the other drop-box is not for the return of election material. Each county clerk utilizing one or more ballot drop-off receptacle shall empty each receptacle at least once each business day of the county clerk's office, and secure the absentee ballots therein in a manner consistent with KRS 117.086(3); however, county clerks shall empty receptacles more frequently than daily, as needed, so as to reasonably accommodate the volume of voter-delivered absentee ballots. Upon each emptying of a receptacle, the individuals collecting absentee ballots pursuant to KRS 117.086(2)(e) shall complete Form SBE 78, "Daily Absentee Drop-Box Verification Sheet."

Section 7. After the receipt of a mail-in absentee ballot by the county clerk and the examination of the signatures located on the outer envelope and the detachable flap, as well as, the voter's signature of record, if a signature match cannot be made, the county board of elections, central counting board, or the county clerk shall make a reasonable effort to contact the voter, which shall, at minimum, include the mailing of Form SBE 77, "Discrepant Mail-in Absentee Signature," to provide notice to the voter that they may cure their signature before the closing of the polls on the day of the election. Upon the county board of elections, central counting board, or the county clerk determining the need for a signature cure, the ballot shall be noted in the Voter Registration System and the county clerk shall, on that same day, input the voter's address and any other required data into the SBE 77 and mail the form to the voter.

Section 8. A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.001, shall meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, "Voter Affirmation Form." A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, "Election Officer Affirmation Form." Both the SBE 71 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.

Section 9. Notwithstanding KRS 117.225(3), in a county using an electronic pollbook, if a voter's name is listed on the precinct list furnished by the State Board of Elections as provided in KRS 117.025, the voter provides proof of identification, the voter is exempt pursuant to KRS 117.225(2), or the voter otherwise satisfies the requirements of KRS 117.228, and if no challenge is made, then on the electronic pollbook he or she shall sign his or her name where prompted.

Section 10. Any voter who is qualified to vote on election day in the county of his or her residence may make application to cast an excused in-person absentee ballot during normal business hours during the six (6) business days immediately preceding the Thursday of no-excuse in-person absentee voting by completing SBE Form 44E, "Excused In-Person Absentee Ballot Application."

Section 11. The status of the tamper-resistant seal and the number on the public counter to be recorded from all voting equipment to be used, shall be recorded before and after each day of in-person absentee voting, on SBE Form 79, "Daily Voting Machine Verification Sheet" which, cumulatively shall be collected by the County Clerk.

VOLUME 48, NUMBER 12– JUNE 1, 2022

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

- (a) "Oath of Voter," SBE Form 32, 04/2022;
- (b) "Ballot Reconciliation Statement," Form SBE 76, 04/2022;
- (c) "Discrepant Mail-in Absentee Signature," Form SBE 77, 04/2022;
- (d) "Voter Affirmation Form," Form SBE 71, 04/2022;
- (e) "Election Officer Affirmation Form" Form 72, 04/2022;
- (f) "Excused In-Person Absentee Ballot Application" Form 44E, 04/2022;
- (g) "Daily Voting Machine Verification Sheet" Form 79, 04/2022;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on June 28, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of several of the Kentucky Revised Statutes amended by Kentucky Acts Chapter 197.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect voters of the Commonwealth, county clerks, and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, voters may need to complete a form or follow absentee ballot delivery instructions, while county clerks and the State Board of Elections will need to take steps to ensure the security of their elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit all in ensuring that all elections conducted in the Commonwealth are done so in a free, fair, and secure manner.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Forms incorporated by reference.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the SBE Forms that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Elections and the Commonwealth's county clerks 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 117.001, 117.015, 117.085, 117.086, 117.087, 117.145, 117.225, 117.228, as amended by Kentucky Acts Chapter 197, require and authorize the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

**STATEMENT OF EMERGENCY
105 KAR 1:450E**

Pursuant to KRS 13A.190(1)(a)3., this emergency administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. KRS 61.5991(3) requires the Kentucky Public Pensions Authority (KPPA) to provide a report to the state budget director's office and the Legislative Research Commission within sixty (60) days of the end of the fiscal year beginning on July 1, 2021. In order to comply with the statutory deadline for this report, the KPPA must receive the

information mandated by KRS 61.5991 from approximately 100 quasi-governmental employers well in advance of the statutory deadline for the report. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the information reported by the quasi-governmental employers and the report provided by the KPPA to the state budget director's office and the Legislative Research Commission are recurring every subsequent fiscal year after the fiscal year beginning on July 1, 2021. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, GOVERNOR
JOHN CHILTON, Chief Executive Officer

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Emergency Administrative Regulation)**

105 KAR 1:450E. Quasi-governmental employer reports on independent contractors and leased employees.

EFFECTIVE: May 5, 2022

RELATES TO: KRS 61.5991, 61.510, 61.543, 61.552, 61.645, 61.675, 61.685

STATUTORY AUTHORITY: KRS 61.5991(1)(c), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705 and 16.505 to 16.652, and to conform to federal statutes and regulations. KRS 61.5991 requires certain employers that participate in the Kentucky Employees Retirement System to report information to the Kentucky Public Pensions Authority on some persons providing services for the participating employer as an independent contractor, a leased employee, or via any other similar employment arrangement.

Section 1. Definitions.

(1) Unless otherwise defined in this section, the definitions contained in KRS 61.510 and the definition of "non-core services independent contractor" in KRS 61.5991 shall apply to this administrative regulation.

(2) "Complete" means all required sections of a form are filled out, the form has been fully executed by an agency head, appointing authority, or authorized designee (such as the reporting official), and all supporting documentation required by the form is included with the form.

(3) "Core services independent contractor" means a person, either personally or through a company or other legal entity, who provides services for a quasi-governmental employer as an independent contractor, other than as a non-core services independent contractor.

(4) "Core services leased employee" means a person who provides services for a quasi-governmental employer as a leased employee through a staffing company, other than as a non-core services independent contractor.

(5) "Direct employment" means employees reported by the quasi-governmental employer in accordance with KRS 61.675 and 105 KAR 1:140.

(6) "File" means a form has been received at the retirement office by mail, fax, secure email, or in-person delivery or via Employer Self Service on the Web site maintained by the agency (if available).

(7) "KPPA" means the administrative staff of the Kentucky Public Pensions Authority.

(8) "Other employment arrangement" means any written agreement between a quasi-governmental employer and a third party (including, but not limited to, a person, company, or other legal entity) for one (1) or more persons to provide services for the quasi-governmental employer in exchange for the third party receiving monetary compensation, remuneration, or profit. "Other employment arrangement" does not include direct employment, any written agreement for one (1) or more persons to provide

services for a quasi-governmental employer as a non-core services independent contractor, or any written agreement for one (1) or more persons to provide services to a quasi-governmental employer if the persons would not be in a regular full-time position as defined in KRS 61.510(21) if the persons were directly employed by the quasi-governmental employer.

(9) "Prior fiscal year" means the fiscal year beginning July 1 that is immediately prior to the fiscal year in which the KPPA provides the report to the state budget director's office and the Legislative Research Commission required by KRS 61.5991(3).

(10) "Quasi-governmental employer" means an employer participating in the Kentucky Employees Retirement System that is a local or district health department governed by KRS Chapter 212, state-supported university or community college, mental health/mental retardation board, domestic violence shelter, rape crisis center, child advocacy center, or any other employer that is eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522. For the purpose of this administrative regulation, "quasi-governmental employer" does not include county attorneys, the Council on State Governments (CSG), the Kentucky Educational Television (KET) Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs (KARP), and the Kentucky Association of Sexual Assault Programs.

Section 2. Required Form for Annual Reporting.

(1)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement by completing the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, and filing the Form 6756 at the retirement office on or before May 2, 2022.

(b) Effective with the fiscal year beginning July 1, 2022, and for each fiscal year thereafter, quasi-governmental employers shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement by completing the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, and filing the Form 6756 at the retirement office. For each fiscal year beginning on or after July 1, 2022, the Form 6756 shall be filed at the retirement office on or before April 15 of the fiscal year in which the Form 6756 is required.

(c) If a quasi-governmental employer contracts for any additional persons to provide services as core services independent contractors, core services leased employees, or through any other employment arrangement after the submission of a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, in accordance with paragraph (a) or paragraph (b) of this subsection, but prior to the end of the fiscal year, the quasi-governmental employer shall file at the retirement office a completed supplemental Form 6756 reflecting only those persons not previously reported on the initial Form 6756. The supplemental Form 6756 shall be filed at the retirement office on or before June 30 of the fiscal year in which the Form 6756 is required.

(2)(a) Persons exempted under Sections 5 and 6 shall not be required to be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

(b) Persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement who would not qualify as an employee in a regular full-time position pursuant to KRS 61.510(21) if directly employed by the quasi-governmental employer shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

(c) Persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement who would be in a position reported to another state-administered retirement system if directly employed

by the quasi-governmental employer shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

(d)1. Quasi-governmental employers may choose to report persons providing services as a non-core services independent contractor on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

2. All persons providing services to a quasi-governmental employer as a non-core services independent contractor who are included on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, shall be treated in the same manner as all other persons listed on the Form 6756, including determinations by the KPPA under Section 3 of this administrative regulation.

(3)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers that do not file at the retirement office a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, on or before May 2, 2022 shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(b) For each fiscal year beginning on or after July 1, 2022, quasi-governmental employers that do not file at the retirement office a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as required by Section 2(1)(b) of this administrative regulation shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(4) If a quasi-governmental employer files at the retirement office an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, without the documentation required by the Form 6756, the Form 6756 shall not be complete and the quasi-governmental employer shall be noncompliant in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d) unless a completed Form 6756 is later filed at the retirement office by the appropriate deadline set forth in subsections (1), (2), and (5) of this Section.

(5)(a) After receiving an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, the KPPA may notify the quasi-governmental employer that additional information is required.

(b) If additional information is required by the KPPA, the KPPA shall notify the quasi-governmental employer in writing to the attention of the agency head, appointing authority, or authorized designee, such as the reporting official, and shall include the following in its notification:

1. A detailed description of the additional information required, and
2. A deadline by which the additional information required must be filed at the retirement office, which shall not be less than fourteen (14) calendar days, but may be longer than fourteen (14) calendar days.

(c) An initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, shall not be considered complete until all additional information requested by the KPPA is on file at the retirement office.

(d) If a quasi-governmental employer fails to provide the additional information to the KPPA by the deadline listed in the notification described in paragraph (b) of this subsection or by the deadline agreed upon by the KPPA and the quasi-governmental employer, then the quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(e) During an audit of the quasi-governmental employer conducted in accordance with KRS 61.675, 61.685, and 61.5991(2)(a)2., if the KPPA discovers that a quasi-governmental employer has failed to list all persons on a Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as required by this administrative regulation, then the quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research

Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

Section 3. Determination of Employee or Independent Contractor.

(1) The KPPA shall have the authority to determine which persons listed on initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) and which persons listed on the initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, are independent contractors.

(2) The KPPA shall apply common law factors used by the Internal Revenue Service to determine whether a person listed on the initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer pursuant to KRS 61.510(5) or an independent contractor of the quasi-governmental employer.

(3)(a) If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental employer shall remit all reports, records, contributions, and reimbursements for that person as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140 effective the calendar month after the KPPA has notified the quasi-governmental employer of its determination in accordance with Section 4 of this administrative regulation.

(b)1. If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental employer shall be required to complete and file at the retirement office a Form 4225, Verification of Past Employment, for that person for all periods during which the person was providing services to the quasi-governmental employer.

2. If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental employer also shall be required to submit all relevant contracts and other documentation demonstrating the relationship between the quasi-governmental employer and the person for all periods during which the person was providing services to the quasi-governmental employer.

(c)1. After reviewing the information from the quasi-governmental employer required by paragraph (b) of this subsection, if the KPPA determines that the person was an employee in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21) for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.675, KRS 61.543, and 105 KAR 1:140, then the person shall be eligible to purchase omitted service in accordance with KRS 61.552(2) for the periods of their previous employment by the quasi-governmental employer in a regular full-time position.

2. After reviewing the information from the quasi-governmental employer required by paragraph (b) of this subsection, if the KPPA determines that the person was an employee in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21) for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.675, KRS 61.543, and 105 KAR 1:140, then the quasi-governmental employer shall be responsible for payment of delinquent omitted employer contributions in accordance with KRS 61.552(2) and 61.675(3)(b) for all periods of the person's previous employment by the quasi-governmental employer in a regular full-time position.

Section 4. Notification to Employers of Determination of Employment Relationship.

(1) Effective with the fiscal year beginning July 1, 2021, and for each fiscal year thereafter, quasi-governmental employers shall be notified by the KPPA of the determination of which persons should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) no later than the submission of the report to the state budget director's office and the Legislative Research Commission required by KRS 61.5991(3).

(2)(a) The KPPA shall notify the quasi-governmental employer of the determination of which persons listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) in one (1) notification letter.

(b) The notification shall be sent to agency head, appointing authority, or authorized designee, such as the reporting official.

(c) The notification shall include:

1. The name of each person who should be reported as an employee in regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140,

2. A description of the contract or other documents pursuant to which each person who should be reported as an employee in a regular full-time position are providing or have provided services to the quasi-governmental employer, and

3. A statement that all other persons listed on the initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, should not be reported as employees in regular full-time positions.

Section 5. Contracts for professional services that have not historically been provided by employees.

(1) A quasi-governmental employer shall not be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if:

(a) The person is providing professional services as a core services independent contractor, core services leased employee, or through any other employment arrangement that have not been performed by direct employees of the quasi-governmental employer since January 1, 2000, and

(b) The professional services have been performed or are being performed for the quasi-governmental employer under a contract filed at the retirement office and determined by the KPPA or the Kentucky Retirement Systems to represent services provided by an independent contractor.

(2) Quasi-governmental employers may choose to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the person is providing professional services under a contract that have not historically been provided by employees.

Section 6. Original Contracts Entered Prior to January 1, 2021.

(1) A quasi-governmental employer shall not be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021, unless one of the exceptions in subsections (2), (3), or (4) of this Section applies.

(2) A quasi-governmental employer shall be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021 if the term of the original contract has expired and the contract has been renewed or continued.

(3) A quasi-governmental employer shall be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through

any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021 if the contract has been modified to encompass different services.

(4) A quasi-governmental employer shall be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with a company entered into prior to January 1, 2021 if the person was not included in the original contract.

(5) Quasi-governmental employers may choose to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021.

Section 7. Report to the state budget director's office and the Legislative Research Commission.

(1)(a) To determine the number of employees of the quasi-governmental employer reported for the prior fiscal year in accordance with KRS 61.5991(3)(a), the KPPA shall add together all employees in regular full-time positions reported by the quasi-governmental employer pursuant to KRS 61.675 and 105 KAR 1:140 in the prior fiscal year.

(b) Persons listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, for the prior fiscal year who are ultimately determined by the KPPA to be employees of the quasi-governmental employer in regular full-time positions shall not be included in the number of employees of the quasi-governmental employer for the prior fiscal year. Such persons may be included in the number of employees of the quasi-governmental employer for a subsequent fiscal year if the person is reported by the quasi-governmental employer in the subsequent fiscal year as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140.

(2) To determine the number of persons providing services to the quasi-governmental employer who were not reported for the prior fiscal year in accordance with KRS 61.5991(3)(b), the KPPA shall use the total number of persons listed on initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, for the prior fiscal year.

(3) The KPPA shall report the following information for each quasi-governmental employer determined to have falsified data or been noncompliant in accordance with KRS 61.5991(3)(d):

(a) The name of the quasi-governmental employer,

(b) A description of the type of data falsified and the support the KPPA has for believing the data to be falsified, if applicable, and

(c) A description of the nature of the noncompliance, if applicable.

Section 8. Incorporation by Reference. (1) Form 6756, "Annual Employer Certification of Non-Contributing Service Providers," dated September 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at kyret.ky.gov.

APPROVED BY AGENCY: April 21, 2022

FILED WITH LRC: May 5, 2022 at 3:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on Tuesday, June 28, 2022 at 10:00 a.m. at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing

was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed emergency administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed emergency administrative regulation. Written comments shall be accepted until June 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed emergency administrative regulation to the contact person.

CONTACT PERSON: Michael Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Board

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the Kentucky Public Pensions Authority (KPPA) on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements in accordance with KRS 61.5991 and 61.645(9)(e). In particular, KRS 61.5591(1)(c) authorizes the promulgation of an administrative regulation to implement KRS 61.5991.

(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 forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar 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: 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: One (1) entity that provides day-to-day operations for the Kentucky Employees Retirement System: the KPPA. One (1) public pension system: the Kentucky Employees Retirement System. Approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community

colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). The number of individuals affected by this administrative regulation is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected quasi-governmental employers will be required to provide the KPPA with information concerning some persons that are providing services for the quasi-governmental employer as independent contractors, leased employees, or through another similar arrangement. If such persons are determined to be employees in regular full-time positions under KRS 61.510(5) and 61.510(21), the affected quasi-governmental employers will be required to prospectively treat the persons as "employees" in accordance with KRS Chapter 61, including reporting employee and employer contributions as required by KRS 61.675 and 105 KAR 1:140. Additionally, in the event of such a determination, the affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675. Finally, the information provided by the KPPA to the state budget director's office and the Legislative Research Commission on the affected quasi-governmental employers may affect subsidies for retirement costs that a quasi-governmental employer may receive pursuant to KRS 61.5991(5) and 61.5991(6).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation for regulated entities is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities are eligible to receive subsidies for retirement costs pursuant to KRS 61.5991(5) and 61.5991(6).

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

(a) Initially: The costs associated with the implementation of this administrative regulation should be minimal.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the KPPA, which will carry out the implementation and enforcement of this regulation pursuant to KRS 61.505 and 61.5991, are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All affected quasi-governmental employers are subject to the same processes and procedures.

FISCAL NOTE

(1) What 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 approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). Additionally, this administrative regulation impacts the KPPA and the Kentucky Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.5991 and 61.645.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 effect of this administrative regulation on the expenditures and revenues of state government agencies in the first full year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this 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 effect of this administrative regulation on revenues of state government agencies in the first year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by 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? The effect of this administrative regulation on revenues of state government agencies in subsequent years the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to the KPPA to administer this administrative regulation in the first year should be minimal.

(d) How much will it cost to administer this program for subsequent years? The cost to the KPPA to administer this administrative regulation in subsequent years should be negligible.

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As a result of this administrative regulation, all persons determined to be employees in regular full-time positions as defined by KRS 61.510(5) and 61.510(21) shall be treated prospectively from the determination as "employees" in accordance with KRS Chapter 61, including the required payment of employee and employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Additionally, in the event of such a determination, affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. The effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect is largely unknown. See subsequent responses for more details.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Regulated

entities that comply with this regulation and KRS 61.5991 are eligible to receive subsidies toward retirement costs pursuant to KRS 61.5991(6). The exact dollar amounts of the subsidies are unknown.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Regulated entities that comply with this regulation and KRS 61.5991 are eligible to receive subsidies toward retirement costs pursuant to KRS 61.5991(6). The exact dollar amounts of the subsidies are unknown.

(c) How much will it cost the regulated entities for the first year? The cost to regulated entities in the first year this administrative regulation is to be in effect is unknown.

(d) How much will it cost the regulated entities for subsequent years? The cost to regulated entities in the subsequent years this administrative regulation is to be in effect is unknown.

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

Cost Savings (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As previously stated, the exact dollar amounts of cost savings through subsidies that eligible regulated entities may receive are not known because the subsidies are at the discretion of the General Assembly and percentage-based. See KRS 61.5991(6). Additionally, the exact dollar amounts of expenditures by regulated entities as a result of this administrative regulation are unknown at this time. All persons determined to be employees in regular full-time positions as defined by KRS 61.510(5) and 61.510(21) shall be treated prospectively from the determination as "employees" in accordance with KRS Chapter 61, including the required payment of employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Furthermore, in the event of such a determination, regulated entities may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have an overall negative or adverse economic impact on regulated entities (quasi-governmental employers), as the regulated entities that comply with this administrative regulation and KRS 61.5991 are eligible to receive subsidies for retirement costs.

**STATEMENT OF EMERGENCY
202 KAR 7:560E**

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, and welfare. Specifically, this emergency amendment is necessary to ensure adequate staffing of ambulances.

Senate Bill 150 (Regular Session 2020) ("SB 150") granted the Kentucky Board of Emergency Medical Services (the "Board") the authority to waive or modify certain statutes and regulations related to the EMS profession during the State of Emergency declared by the Governor in Executive Order 2020-215. See SB 150 § 1(13). On or about April 14, 2020, the Board filed an emergency waiver and modification of 202 KAR 7:560 with the Secretary of State. The waiver and modification waived (1) the requirement that paramedics staff at least 25% of Class I and Class IV Advanced Life Support (ALS) ambulances and (2) the requirement that ambulances be driven by emergency medical technicians (EMTs), providing instead that ambulances could be driven by "[a] driver certified in CPR and who has had an emergency vehicle operator's course". The Board's modification and waiver of 202 KAR 7:560 was ratified and approved by the General Assembly until April 14, 2022. See House Joint Resolution 1 (Special Session 2021) § 4(29)(k); Senate Bill 25

(Regular Session 2022) § 4(27)(k).

On March 30, 2022, the Board filed emergency and ordinary amendments to 202 KAR 7:560 to allow emergency medical responders (EMRs) to drive ambulances instead of EMTs. (See Section 1, subsections (1)(a), (2)(a), (3)(a), (4)(a), (5)(a), (6)(a)(1), (7)(a)(1), and (8)(a). Section 1(17) is also stricken because under the March 30, 2022 amendments and these amendments, EMRs may be assigned to drive ambulances instead of EMTs and, therefore, Section 1(17) is no longer necessary.) The amendments also waived the requirement that paramedics staff at least 25% of Class I and Class IV ALS ambulances. Under the March 30, 2022 amendments and these amendments, Class I ALS agencies must instead have a paramedic on-duty at all times and all Class IV ALS ambulances must be staffed with either an Advanced EMT or a paramedic. Modifications to the paramedic staffing requirements are necessary because, due to staffing shortages, it is difficult for some agencies – particularly smaller ones – to ensure that they have enough paramedics on-duty to staff 25% of their ambulances.

At a duly called meeting of the Board on April 14, 2022, Judge/Executive Houston Wells, on behalf of the Kentucky County Judge/Executive Association, requested that the Board extend the provision in the Board's modification and waiver of 202 KAR 7:560 that allowed individuals who are certified in CPR and have completed an emergency vehicle operator's course to drive ambulances. This request was approved by the Board. At a duly called special meeting of the Board on April 21, 2022, the Board approved this emergency amendment and its companion ordinary amendment. This emergency amendment differs from the emergency amendment filed on March 30, 2022, in that it allows individuals who are certified in CPR and have completed an emergency vehicle operator's course to drive ambulances until September 1, 2022, after which ambulance drivers must be certified EMRs (as required under the March 30, 2022 emergency amendment). The modifications to the paramedic minimum staffing requirements for Class I and Class IV ALS agencies remain unchanged from the March 30, 2022 amendments.

Emergency medical services across the Commonwealth continue to experience staffing shortages. Therefore, a temporary extension of ambulances services' ability to assign drivers who are CPR-certified and have completed an emergency vehicle operator's course is critical to ensuring that agencies can adequately staff ambulances. This extension is intended to allow time for additional personnel to become certified EMRs by September 1, 2022. Additionally, the removal of the requirement that paramedics staff at least 25% of Class I and Class IV ALS ambulances is necessary to ensure that such agencies can satisfy the minimum ambulance staffing requirements and utilize all available ambulances. However, Class I ALS agencies are required to have at least one (1) paramedic on-duty at all times and all Class IV ALS ambulances must be staffed with either an Advanced EMT or a paramedic.

An ordinary administrative regulation is not sufficient to address current EMS staffing shortages, which pose an imminent threat to public health, safety, and welfare. This emergency amendment is necessary to modify the minimum staffing requirements for ambulances to ensure that agencies can utilize their available ambulances. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation. EMS staffing shortages are expected to continue and, therefore, under the ordinary administrative regulation, agencies will continue to be permitted to assign EMRs as ambulance drivers and Class I and Class IV ALS agencies will not be required to staff at least 25% of their ambulances with paramedics.

ANDY BESHEAR, Governor
PHILIP DIETZ, Chair

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE
SYSTEM
Kentucky Board of Emergency Medical Services
(Emergency Amendment)

202 KAR 7:560E. Ground vehicle staff.

EFFECTIVE: May 3, 2022

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

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

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

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

(a) Until September 1, 2022, a driver certified in CPR who has had an emergency vehicle operator's course. On and after September 1, 2022, a[A] driver certified as an emergency medical responder (EMR)[technician (EMT)]; and

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

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

(a) Until September 1, 2022, a driver certified in CPR who has had an emergency vehicle operator's course. On and after September 1, 2022, a[A] driver certified as an emergency medical responder (EMR)[technician (EMT)]; and

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

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

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

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

(a) Until September 1, 2022, a driver certified in CPR who has had an emergency vehicle operator's course. On and after September 1, 2022, a[A] driver certified as an emergency medical responder (EMR)[technician (EMT)]; and

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

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

(a) Until September 1, 2022, a driver certified in CPR who has had an emergency vehicle operator's course. On and after September 1, 2022, a[A] driver certified as an emergency medical responder (EMR)[technician (EMT)]; and

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

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

(a) Until September 1, 2022, a driver certified in CPR who has had an emergency vehicle operator's course. On and after September 1, 2022, a[A] driver certified as an emergency medical responder (EMR)[technician (EMT)];

(b) An attendant licensed as a paramedic; and

(c) One (1) licensed:

1. Registered nurse;
2. Advanced practice registered nurse;
3. Respiratory therapist;

4. Physician assistant;

5. Physician; or

6. Additional paramedic.

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

1. Until September 1, 2022, a driver certified in CPR who has had an emergency vehicle operator's course. On and after September 1, 2022, a[A] driver certified as an emergency medical responder (EMR)[technician (EMT)];

2. A primary attendant licensed as a registered nurse; and

3. One (1) additional attendant licensed as a:

- a. Registered nurse;
- b. Advanced practice registered nurse;
- c. Respiratory therapist;
- d. Physician assistant;
- e. Physician; or
- f. Paramedic.

(b) Any attendant hired after January 1, 2020 shall acquire and maintain within one (1) year of hire, a specialty certification in Pediatric Critical Care or Neonatal Critical Care acquired through successful completion of a validated examination administered by an independent entity not associated with a specific course or program of education.

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

1. Until September 1, 2022, a driver certified in CPR who has had an emergency vehicle operator's course. On and after September 1, 2022, a[A] driver certified as an emergency medical responder (EMR)[technician (EMT)];

2. A primary attendant licensed as a registered nurse; and

3. One (1) additional attendant licensed as:

- a. An advanced practice registered nurse;
- b. A respiratory therapist;
- c. A physician assistant;
- d. A physician;
- e. A registered nurse; or
- f. Paramedic.

(b) Any attendant hired after January 1, 2020 shall acquire and maintain within one (1) year of hire, a specialty certification in Pediatric Critical Care or Neonatal Critical Care acquired through successful completion of a validated examination administered by an independent entity not associated with a specific course or program of education.

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

(a) Until September 1, 2022, a driver certified in CPR who has had an emergency vehicle operator's course. On and after September 1, 2022, a[A] driver certified as an emergency medical responder (EMR)[technician (EMT)]; and

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

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

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

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

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

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

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

- (a) Emergency medical responder (EMR); or
- (b) Emergency medical technician (EMT).

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

- (a) A certified Advanced EMT; or
- (b) A licensed paramedic.

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

- (a) Emergency medical responder (EMR); or
- (b) Emergency medical technician (EMT).

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

- (a) A certified Advanced EMT; or
- (b) A licensed paramedic.

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

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

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

- (a) Disasters;
- (b) Mass casualty incidents; or
- (c) Extraordinary scene conditions that would impair the safety of the patient or personnel operating at the scene.

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

~~(17)~~[(18)] Alternative staff shall not operate a licensed vehicle unless the:

- (a) Agency administrator so directs; and
- (b) Vehicle is out of service and not subject to an emergency response.

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

- (a) Be at least eighteen (18) years of age;
- (b) Hold a valid driver's license in any state or territory of the United States; and
- (c) Complete at least four (4) hours of driver training and education every two (2) years.

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

- (a) Review of driving a vehicle under emergency conditions;
- (b) Review of KRS 189.910 through 189.950 regarding operation of emergency vehicles;
- (c) Demonstration by the student of forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose; and
- (d) Review of defensive driving techniques and procedures with hands-on experience or exposure by visual aids or planned demonstrations.

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

PHILIP DIETZ, Chair

APPROVED BY AGENCY: April 21, 2022

FILED WITH LRC: May 3, 2022 at 12:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2022 at 1:00 p.m. ET at the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509. 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 June 30, 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: John K. Wood, counsel for the Kentucky Board of Emergency Medical Services, 163 East Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, email administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John K. Wood

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:560 establishes the minimum staffing requirements for ground vehicles.

(b) The necessity of this administrative regulation: KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.030 by establishing the minimum staffing requirements for ground vehicles.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes the minimum staffing requirements for ground vehicles.

(2) If 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 allow personnel certified in CPR and who have had an emergency vehicle operator's course to drive ambulances until September 1, 2022, after which ambulance drivers must be certified emergency medical responders (EMRs). This amendment also removes the requirement that Class I and Class IV ALS agencies staff at least 25% of their ambulances with paramedics. Instead, Class I ALS agencies must have at least one (1) paramedic on-duty at all times and all Class IV ALS ambulances must be staffed with either an Advanced EMT or a paramedic.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to mitigate staffing concerns and ensure that ambulances are adequately staffed and that available ambulances can be utilized.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes the minimum staffing requirements for ground vehicles.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the minimum staffing requirements for ground vehicles.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky Licensed Ground Ambulance Services and Kentucky Medical First Response agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All Kentucky Licensed Ground Ambulance Services and Kentucky Medical First Response agencies will be permitted to assign personnel certified in CPR and who have had an emergency vehicle operator's course to drive ambulances until September 1, 2022, after which ambulance drivers must be certified emergency medical responders (EMRs). Class I ALS agencies will be required to have at least one (1) paramedic on-duty at all times. All Class IV ALS ambulances will need to be staffed with either an Advanced EMT or a paramedic. However, neither Class I nor Class IV ALS agencies will be required to have paramedics staffing at least 25% of their ambulances.

(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 any entity identified in question (3), other than administrative costs that may be incurred in recruiting and maintaining qualified attendants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities affected will benefit by being permitted to assign personnel certified in CPR and who have had an emergency vehicle operator's course to drive ambulances until September 1, 2022. After September 1, 2022, the entities affected will benefit by being permitted to assign EMRs to drive ambulances. Class I and Class IV ALS agencies will benefit from not being required to have paramedics staffing at least 25% of their ambulances.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board shall pay for all administrative costs of reviewing compliance with applicable requirements.

(a) Initially: There will be no cost to any entity identified in question (3), other than administrative costs that may be incurred in recruiting and maintaining qualified attendants.

(b) On a continuing basis: There will be no cost to any entity identified in question (3), other than administrative costs that may be incurred in recruiting and maintaining qualified attendants.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Emergency Medical Services is a state agency that receives its annual budget from the state government.

(7) Provide an assessment of whether an 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 establishes any fees or directly or indirectly increases any fees: This regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because the amendment establishes minimum staffing certification requirements for ground vehicles, which apply to all affected entities to ensure that all affected personnel meet the minimum qualifications.

FISCAL NOTE

(1) What 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 administrative regulation will impact all Kentucky Licensed Ground Ambulance Services and Kentucky Medical First Response agencies.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.030. No federal statutes necessitate this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any cost savings.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not impose any costs.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not impose any costs.

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

Cost Savings (+/-): This administrative regulation will not generate any cost savings.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. This administrative regulation will not have a major economic impact.

STATEMENT OF EMERGENCY
300 KAR 6:011E

This emergency administrative regulation is necessary to immediately establish and implement the Historic Rehabilitation Tax Credit Certifications program. The Kentucky Historic Preservation Tax Credit Program relied on 300 KAR 6:010 to define terms, provide direction for the program's implementation, and establish a fee structure for direct costs to the Kentucky Heritage Council from program management. This emergency regulation reinstates and updates a long-standing but outdated (and recently expired) version. If not corrected, the newly expanded/enhanced Kentucky Historic Preservation Tax Credit Program's implementation will remain at risk. This emergency administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)3. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
MICHAEL E. BERRY, Secretary

TOURISM, ARTS AND HERITAGE CABINET
Heritage Council
(New Emergency Administrative Regulation)

300 KAR 6:011E. Historic rehabilitation tax credit certifications.

EFFECTIVE: April 29, 2022
RELATES TO: KRS 171.396, 171.3961, 171.3963, 171.397, 54 U.S.C. 300101, 36 C.F.R. 800, 42 U.S.C. 12101
STATUTORY AUTHORITY: KRS 171.397(12), (14)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.397(12) and (14) authorizes the Kentucky Heritage Council to promulgate administrative regulations to implement the certified historic structures rehabilitation tax credit and to impose fees for

tax credit applications. This administrative regulation establishes the application process to determine a taxpayer's eligibility to claim a certified historic structure rehabilitation tax credit.

Section 1. Definitions. (1) "Act" means the enabling legislation for the historic rehabilitation tax credit, KRS 171.396 to 171.397.

(2) "Adjusted basis of the structure" means the purchase price of the property, minus the cost of land, plus improvements already made, minus allowable depreciation.

(3) "Certified historic structure" is defined by KRS 171.396(1).

(4) "Certified rehabilitation" is defined by KRS 171.396(2).

(5) "Certified rehabilitation credit cap" is defined by KRS 171.396(3).

(6) "Complete and adequately documented" means the applicant has provided all elements outlined in the Part 1, 2, 3 or TC-4 application, fee payment, adequate photo documentation at the time of purchase and documenting any subsequent changes by current owner, photo key, maps, and related architectural renderings or construction documents.

(7) "Completed rehabilitation project" means any certified historic structure which has been substantially rehabilitated and, after the completion date, has been submitted by the applicant to the council for final certification of rehabilitation under the Act.

(8) "Completion date" means:

(a) For owner-occupied residential property, the month, date, and year in which the last eligible rehabilitation expense is incurred; or

(b) For all other property, the month, date, and year when the rehabilitation project is completed to allow occupancy of the entire building or some identifiable portion of the building and, if applicable, a certificate of occupancy has been issued.

(9) "Department" means the Kentucky Department of Revenue.

(10) "Director" means the executive director of the Kentucky Heritage Council.

(11) "Disqualifying work" is defined by KRS 171.396(5).

(12) "Exempt entity" is defined by KRS 171.396(6).

(13) "File" or "filed" means physical receipt by the council of an application for certification along with the tender of the appropriate review fee.

(14) "Final amount of credit approved" means the individual credit awarded for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.3961 or KRS 171.397, whichever is applicable, when the Certificate of Rehabilitation-Part 3 is filed and approved by the council.

(15) "Inspection" means a visit by the director or an authorized representative of the council to a property for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

(16) "Meaningful consultation" is the opportunity to consult with a historic building owner prior to the removal of historic fabric or work that does not meet the Secretary of the Interior's Standards for Rehabilitation.

(17) "National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the U. S. Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, 54 U.S.C. 300101, and implemented through 36 C.F.R. Part 800.

(18) "Owner" means:

(a) The person, partnership, corporation, public agency, or other entity holding a fee simple interest in a property, or any other person or entity recognized by the department for purposes of the applicable tax benefit under KRS 171.397 or KRS 171.3961, whichever is applicable; or

(b) A lessee, if the remaining term of the lease is not less than twenty-seven and one-half (27 1/2) years for residential property or thirty-nine (39) years for all other property.

(19) "Owner-occupied residential property" is defined by KRS 171.396(8).

(20) "Preliminary tax credit allocation" means the maximum individual credit available for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.397,

on April 29 of the year in which the Certificate of Rehabilitation-Parts 1 and 2 are filed and approved by the council.

(21) "Property" means a building and its site and landscape features.

(22) "Qualified rehabilitation expense" is defined by KRS 171.396(9).

(23) "Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historic, architectural, and cultural values as determined by the director.

(24) "Rehabilitation plan" means a plan pursuant to which a certified historic structure will be substantially rehabilitated.

(25) "Rehabilitation project" means any certified historic structure, submitted by the applicant to the council, for certifications of rehabilitation under the Act.

(26) "Standards for rehabilitation" mean the Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. 67.7, as established by the U. S. Department of Interior and restated in Section 4(2) of this administrative regulation.

(27) "Starting date" means the date upon which the applicant applies for the building permit for work proposed by the rehabilitation plan or the date upon which actual physical work contemplated by the plan of rehabilitation begins.

(28) "Substantial rehabilitation" is defined by KRS 171.396(10).

(29) "Taxpayer" is defined by KRS 171.396(11).

Section 2. Certifications of Rehabilitation. (1) For tax credits under KRS 171.3961, a request for certification of historic significance and of rehabilitation under the Act shall be a five (5) stage process that requires the filing of the following forms:

(a) Certification Application-Intent to Apply for Expanded Credit;

(b) Certification Application Part 1-Evaluation of National Register Status;

(c) Certification Application Part 2-Description of Rehabilitation;

(d) Certification Application Part 3-Request for Certification of Completed Work; and

(e) Certification Application-Summary of Investment and Election of Credit.

(2) For tax credits under KRS 171.397, a request for certification of historic significance and of rehabilitation under the Act shall be a four (4) stage process that requires the filing of the following forms:

(a) Certification Application Part 1-Evaluation of National Register Status;

(b) Certification Application Part 2-Description of Rehabilitation;

(c) Certification Application Part 3-Request for Certification of Completed Work; and

(d) Certification Application-Summary of Investment and Election of Credit.

(3) Intent to Apply for Expanded Credit shall be a request for certification of an applicant's intent to claim a tax credit established by KRS 171.3961 for a proposed rehabilitation project.

(4) Part 1 shall be a request for certification of historic significance.

(5) Part 2 shall be a request for certification of a proposed rehabilitation project.

(6) Part 3 shall be a request for certification of a completed rehabilitation project.

(7) Summary of Investment and Election of Credit shall be actual cost, square footage, and use attributed to the rehabilitation work and an irrevocable election by the taxpayer to receive a refundable credit or transfer the credit.

(8) Certification of applications shall be filed with the council as follows:

(a)1. Part 1 and Part 2 shall be filed with the council on or before April 29 for a preliminary determination of maximum credit eligibility for a credit under KRS 171.397.

2. Part 1, Part 2, and Intent to Apply for Expanded Credit shall be filed with the council on or before June 30, 2015, for a credit under KRS 171.3961.

(b) Part 1 and Part 2 may be filed after rehabilitation has commenced, but an applicant who begins rehabilitation prior to receiving Part 2 certification assumes the risk that certification may be denied. If rehabilitation has commenced prior to receiving Part 2 certification, the applicant is required to check a corresponding box on the Part 2 form that may prompt an inspection by council staff to determine level of completeness. If it is determined that demolition and/or rehabilitation has progressed beyond the point where "meaningful consultation" can be carried out, the council shall notify the applicant within thirty (30) days of inspection that a foreclosure on the agency's opportunity to comment on the rehabilitation plan has occurred and the application is closed. Any application or review fees that have been paid may be refunded. A taxpayer may appeal a determination of foreclosure by filing an appeal in writing within thirty (30) days of notification to the council board. The council board shall either confirm the determination or reverse the determination with instructions to return the application to council staff for standard processing and review. The council shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is considered at the regularly scheduled council meeting where a quorum is present.

(c) Part 3 and Summary of Investment and Election of Credit shall be filed with the council after the completion date of a completed rehabilitation project for a final determination of credit.

(9) If at any stage an application is not approved by the council, the rehabilitation project shall not qualify as a certified rehabilitation for purposes of the Act.

Section 3. Certifications of Historic Significance-Part 1. (1) Application. The Certification Application Part 1-Evaluation of National Register Status form shall be timely filed with the council for certification of historic significance.

(a) Property individually listed in the National Register of Historic Places. Individually listed property shall be considered a certified historic structure for purposes of the Act subject to confirmation by the council. The following information shall be provided by the applicant:

1. Names and mailing addresses of owners;
2. Name and address of property;
3. Photographic documentation of the building and property prior to and after alteration, showing exterior and interior features and spaces to ensure that the listed property has not lost the characteristics which caused it to be listed on the National Register of Historic Places;
4. Descriptions of all the buildings within the listing if the property contains more than one (1) building for the purpose of determining which of the buildings are of historic significance to the property;
5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;
6. Brief statement of significance summarizing how the property reflects the values that give its distinctive historical and visual character, and explaining any significance attached to the property itself;
7. A copy of a map indicating where the subject property is located. If an individually-listed property is also located in a historic district listed in the National Register of Historic Places, a copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district shall also be included; and
8. Signatures of owners requesting confirmation of listing in the National Register of Historic Places or concurring in the request if the owners are not the applicants.

(b) Property located in a historic district listed in the National Register of Historic Places. An applicant shall request that the property be certified by the council as a historic structure contributing to the significance of a historic district. The following information shall be provided:

1. Names and mailing addresses of owners;
2. Name and address of property;
3. Name of historic district;
4. Photographic documentation of the building and property

prior to and after alteration, showing exterior and interior features and spaces, and photographic documentation of adjacent properties and structures on the street showing significance to the historic district;

5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;

6. Brief statement of significance summarizing how the property reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself;

7. A copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district; and

8. Signatures of owners requesting certification or concurring in the request if the owners are not the applicants.

(2) Multiple structures. A property containing more than one (1) building shall be treated as a single certified historic structure if the council determines that the buildings have been functionally-related historically to serve an overall purpose, whether the property is individually listed in the National Register or is located within a registered historic district. Buildings that are functionally related historically shall be those which have functioned together to serve an overall purpose during the property's period of significance.

(3) Standards for evaluating significance.

(a) In addition to the existing National Register documentation, an application for certification of historic significance shall contain documentation with information about the significance of the specific buildings and structures.

(b) A property located within a historic district listed in the National Register of Historic Places shall be evaluated for contribution to the historic significance of the district by applying the following standards:

1. A property contributing to the historic significance of a district shall be a property which by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development;

2. A property not contributing to the historic significance of a district shall be a property which does not add to the district's sense of time and place and historical development; or where the location design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the property has been irretrievably lost; and

3. If the building was built within the past fifty (50) years, it shall not be considered to contribute to the significance of a district, unless a strong justification concerning its historical or architectural merit is given or the historical attributes of the district are considered to be less than fifty (50) years old.

(c) An evaluation of historic significance shall be made based upon the appearance and condition of the property before rehabilitation was begun.

(d) The qualities of a property and its environment which qualify it as a certified historic structure shall be determined taking into account all available information, including information derived from the physical and architectural attributes of the building, and shall not be limited to information contained in the National Register nomination reports.

(e) If a nonhistoric surface material obscures a façade, it may be necessary to remove the surface materials prior to requesting certification so that a determination of significance can be made. After the material has been removed, if the obscured façade has retained substantial historic integrity and the property otherwise contributes to the historic district, it shall be determined to be a certified historic structure.

(4) Review of Part 1 Applications.

(a) A complete and adequately-documented Certification Application Part 1-Evaluation of National Register Status form shall be reviewed by the council to determine if the property contributes to the historic significance of the district by applying the standards established in subsection (3) of this section.

(b) After consideration of the information contained in the application and other available information, the council shall approve the application if:

1. The property meets the standards for evaluating for significance established in subsection (3) of this section; or

2. The director confirms that the property is individually listed in the National Register of Historic Places.

(5) If the application is not adequate to complete the review, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application. The applicant's failure to respond may result in denial of the application. The council's notification or failure to notify shall not constitute a waiver of a deficiency or an alteration of a time limitation established under the Act.

(6) An applicant shall notify the council of any substantial damage, alteration, or changes to a property that occurs after issuance of a Certification of Part 1-Evaluation of National Register Status. The council may, upon thirty (30) days written notice to the applicant, withdraw a certification of historic significance and may seek to have the property removed from the National Register under 36 C.F.R. 800.

Section 4. Certifications of Rehabilitation-Part 2. (1) Applications.

(a) A Certificate of Application Part 2-Description of Rehabilitation form shall be timely filed with the council for certification that a rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(b) A rehabilitation project shall be done according to a rehabilitation plan.

(c) The burden shall be upon the applicant to supply sufficient information to the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation.

(d) An application shall include the following information:

1. Names and mailing addresses of owners;

2. Name and address of property;

3. Designation of whether the application is for owner-occupied residential property or other property;

4. Information sufficient to establish the proposed use of the structure;

5. The adjusted basis for the property if other than owner-occupied residential or owned by an exempt entity;

6. Proposed starting date and completion date;

7. Projected qualified rehabilitation expenses;

8. Numbered photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment before rehabilitation that correspond to numbered positions on existing plans;

9. The taxpayer identification number or Social Security number;

10. Written detailed description of existing features and their conditions, and a written description of proposed rehabilitation work and the impact on existing features;

11. Plans for any attached, adjacent, or related new construction, if applicable; and

12. Signatures of owners requesting certification or concurring in the request if the owners are not the applicant.

(2) Standards for rehabilitation.

(a) The standards for rehabilitation shall be the criteria used to determine if the rehabilitation qualifies as a certified historic rehabilitation. Rehabilitation shall be consistent with the historic character of the structure or structures and, if applicable, the district in which it is located.

(b) A rehabilitation project shall meet all of the standards for rehabilitation established in this paragraph.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. A change that creates a false sense of historical development, such as adding a conjectural feature or

architectural element from another building, shall not be undertaken.

4. Changes to the property that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

6. Deteriorated architectural features shall be repaired rather than replaced. If the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, if possible, materials. Replacement of missing architectural features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If these resources shall be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(c) The quality of materials, craftsmanship, and related new construction in rehabilitation shall match the quality of materials, craftsmanship, and design of the historic structure in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings, and use of these treatments or materials shall result in denial of certification. The burden shall be upon the applicant to consult with the council for a determination as to what rehabilitation measures are appropriate for the structure. Inappropriate rehabilitation measures on historic properties shall include:

1. Improper masonry repointing materials and techniques;

2. Improper exterior masonry cleaning methods;

3. Improper introduction of insulation if damage to historic fabric would result; and

4. Incompatible additions and new construction.

(d) The council may consider the dismantling and rebuilding of a portion of a certified historic structure to stabilize and repair weakened structural members and systems as a certified historic rehabilitation if:

1. The necessity for dismantling is justified in supporting documentation;

2. Significant architectural features and overall design are retained; and

3. Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

(3) Substantial rehabilitation. A rehabilitation project shall be a substantial rehabilitation only if the requirements of KRS 171.396(9) and (10) are met. To determine whether a rehabilitation project is a substantial rehabilitation, the conditions established in this subsection shall apply.

(a) Increases to the adjusted basis of the structure shall include capital improvements to the structure, legal fees incurred for perfecting title, and zoning costs. Any depreciation previously claimed for the structure shall be subtracted from this figure.

(b) If a cost only partially qualifies as an eligible rehabilitation expense because some of the cost is attributable to the enlargement of the building, the expenditures shall be apportioned proportionately between the original portion of the building and the enlargement.

(c) In addition to the expenses listed in KRS 171.396(9), qualified rehabilitation expenses shall include:

1. The cost of work done to structural components of the building

within the footprint of the historic structure if they are permanent;

2. Costs related to new heating, plumbing, and electrical systems, as well as expenses related to updating kitchens and bathrooms, compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101), and fire suppression systems and fire escapes; and

3. The cost of architectural and engineering fees, site survey fees, legal expenses, development fees, and other construction-related costs, if those costs are added to the basis of the property.

(d) In addition to the exclusions listed in KRS 171.396(9), qualified rehabilitation expenses shall not include the construction costs for a new building, parking lot, or sidewalk.

(4) Review of Part 2 Applications.

(a) A complete and adequately documented Certification Application Part 2- Description of Rehabilitation shall be reviewed by the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation. Applicants that do not meet this standard will be notified via email and given 10 days to submit missing elements; otherwise, the project will be placed on hold and removed from the allocation pool until KHC certifies that the Part 2 constitutes a complete and adequately documented application.

(b) After consideration of the information contained in the application and other available information, the council shall issue a preliminary certification of rehabilitation if the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(5)(a) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established in subsection (2) of this section, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application.

(b) An applicant's failure to respond may result in denial of the application.

(c) The council's notification or failure to notify shall not constitute a waiver of a deficiency or an alteration of a time limitation established under the Act.

(6) Changes to rehabilitation plans. Once a rehabilitation plan has been approved by the council, an applicant may only make substantive changes in the work described in the application by:

(a) Filing a Certification Application-Continuation/Amendment form with the council; and

(b) Receiving notification from the council that the revised plan continues to meet the standards of rehabilitation established in subsection (2) of this section and is a substantial rehabilitation.

Section 5. Certifications of Rehabilitation-Part 3 Completed Work. (1) Application. Upon completion of a rehabilitation project, an applicant shall file a Certification Application Part 3-Request for Certification of Completed Work form with the council for final certification of rehabilitation. An application shall include the following information:

(a) Names and mailing addresses of owners;

(b) Name and address of property;

(c) Designation of whether the application is for owner-occupied residential property or other property;

(d) Actual starting date and completion date;

(e) Actual qualified rehabilitation expenses;

(f) Photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment during and after rehabilitation;

(g) The taxpayer identification number or Social Security number; and

(h) Signatures of owners or a representative authorized to sign on behalf of the owner requesting certification.

(2) Summary of Investment and Election of Credit. In addition to filing a Certification Application Part 3-Request for Certification of Completed Work form, the applicant shall file a Summary of Investment and Election of Credit form with the council. The Summary of Investment and Election of Credit shall include the following:

(a) Names and mailing addresses of the owners;

(b) Name and address of the property;

(c) Actual costs attributed to the rehabilitation work;

(d) Signatures of the owners or a representative authorized to sign on behalf of the owner;

(e) Notarization of the signatures if the property is an owner-occupied residence or, for all other property, compilation by a certified public accountant or equivalent of the actual costs attributed to the rehabilitation of the historic structure; and

(f) An irrevocable election by the taxpayer to:

1. Use the credit, in which case, the credit shall be refundable;

or

2. Transfer the credit, pursuant to KRS 171.397(8).

(3) Scope of review.

(a)1. Rehabilitation shall encompass all work on the interior and exterior of the certified historic structure or structures and the site and environment, as determined by the council, as well as related demolition, new construction, or rehabilitation work which may affect the historic qualities, integrity or site, landscape features, and environment of the certified historic structure.

2. Conformance to the standards of rehabilitation established in Section 4(2) of this administrative regulation shall be determined on the basis of application documentation and other available information by evaluating the property as it existed prior to the commencement of rehabilitation.

(b) A phased rehabilitation project shall not be permitted. Starting April 30, 2022, a Part 2 application may not be submitted if a building has already received a Part 2 allocation from a previous year that has not yet been certified or if the owner has not relinquished that allocation in writing.

(c) Portions of a completed rehabilitation project that are not in conformance with the standards for rehabilitation shall not be exempted and may result in denial of the Certification Application Part 3-Request for Certification of Completed Work.

(4) Review of Part 3 Applications. A complete and adequately documented Certification Application Part 3 - Request for Certification of Completed Work shall be reviewed by the council for a determination that the completed rehabilitation project is a certified rehabilitation and a determination of the final amount of credit approved. The council shall issue a final certification of rehabilitation if all the following requirements have been met:

(a) All elements of the completed rehabilitation project meet the standards for rehabilitation as established in Section 4(2) of this administrative regulation;

(b) The completed rehabilitation project was a substantial rehabilitation; and

(c) Part 3 was filed with the council after the completion date.

(5) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established in Section 4(2) of this administrative regulation, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application. Applicant's failure to respond may result in denial of the application. The council's notification or failure to notify shall not constitute a waiver or alteration of time limitations established under the Act.

Section 6. Recapture of Preliminary Tax Credit Allocation For Credits Under KRS 171.397. (1) Notice of Recapture. For tax credits under KRS 171.397, if an owner fails to obtain a Certification of Completed Work within thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax credit, the director shall mail to the owner written notice of recapture of the preliminary tax credit allocation.

(2) Objection.

(a) If the owner objects to the recapture of the preliminary allocation of tax credit, the owner shall file written notice of objection accompanied by a supporting statement setting forth grounds for objection within forty-five (45) days of the date of the notice of recapture.

(b) If the owner does not timely object, the preliminary tax credit allocation shall be recaptured by the council and added to the certification rehabilitation credit cap for the next calendar year, pursuant to KRS 171.397(2)(c).

(3) Reinstatement. Within thirty (30) days of receipt of the owner's notice of objection, the council shall review the objection and determine if the owner has provided reasonable grounds as established in subsection (5) of this section to reinstate the preliminary allocation.

(a) If the council determines that the preliminary tax credit allocation shall be reinstated, the:

1. Council shall give the owner written notice that the preliminary tax credit allocation has been reinstated for an additional twenty-four (24) months;

2. Owner shall pay a review fee for a Part 2 application in the amount established in Section 10(2) of this administrative regulation, whichever is applicable; and

3. Owner shall obtain a Certification of Completed Work on or before the expiration of twenty-four (24) months. If the owner fails to obtain a Certification of Completed Work or fails to request an extension under subsection (4) of this section, the council shall initiate recapture of the preliminary tax credit allocation under the procedures established in this section.

(b) If the council determines that the preliminary tax credit allocation shall not be reinstated:

1. The council shall give the owner written notice that the preliminary tax credit allocation has not been reinstated;

2. The owner shall be given thirty (30) days from the date of the notice that the preliminary tax credit allocation has not been reinstated to file an appeal, pursuant to Section 8 of this administrative regulation; and

3. If the owner fails to file a timely appeal, pursuant to Section 8 of this administrative regulation:

a. The preliminary allocation shall not be reinstated;

b. The preliminary tax credit allocation shall be recaptured by the council; and

c. The preliminary tax credit allocation shall be added to the certification rehabilitation credit cap for the next calendar year, pursuant to KRS 171.397(2)(c).

(4) Extension of Preliminary Tax Credit Allocation. (a) At any time prior to expiration of thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax, an owner may request in writing that the preliminary tax credit allocation be extended for a period of twenty-four (24) months if the:

1. Owner provides written documentation of reasonable grounds established in subsection (5) of this section for an extension; and

2. Owner pays a review fee for a Part 2 application in the amount established in Section 10(2) of this administrative regulation, whichever is applicable.

(b) Prior to the expiration of the twenty-four (24) month extension, the owner may request another extension under the procedures established in this subsection. There shall not be a limit on the number of extensions that an owner may request.

(5) Grounds for Reinstatement or Extension.

(a) Reasonable grounds shall be documentation of on-going efforts to obtain financial, legal, material, or physical resources necessary to complete the rehabilitation project or documentation that the delay in completion of the rehabilitation project is necessary and unavoidable.

(b) Reasonable grounds shall not include casualty loss or demolition to the extent that the structure no longer qualifies as a certified historic structure, inability to qualify as a substantial rehabilitation, or inability or unwillingness to perform work conditioned by the council and necessary to qualify the project as a certified rehabilitation.

(c) The number of prior reinstatements or extensions shall not be a factor in determining if a reinstatement or extension shall be granted.

Section 7. Inspection. The director or an authorized representative of the council shall be permitted to conduct an inspection of the property at any time up to three (3) years after the council has issued a Certification of Completed Work to determine if the work meets the standards for rehabilitation established in Section 4(2) of this administrative regulation.

Section 8. Appeal. A taxpayer may appeal a determination that the rehabilitation project does not qualify as a certified rehabilitation for purposes of the Act by filing an appeal in writing, in care of the council, to the director or a reviewing officer designated by the director to hear an appeal. (1) An appeal shall be made within thirty (30) days of the date of receipt of the determination being appealed.

(2) The director or the reviewing officer shall decide, based solely upon the record developed by the council, if the council:

(a) Reached incorrect conclusions of law;

(b) Made clearly erroneous factual findings;

(c) Did not consider relevant facts; or

(d) Abused the discretion available to that person.

(3) The director's or reviewing officer's decision shall:

(a) Confirm the determination;

(b) Reverse the determination on account of incorrect conclusions of law; or

(c) Remand the matter to the council for further proceedings.

(4) The director or reviewing officer shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

(5) If the appeal is decided by a reviewing officer and the reviewing officer affirms the determination, the taxpayer may appeal the reviewing officer's determination in writing to the director, pursuant to this subsection.

(a) An appeal to the director shall be filed within the time period established in subsection (1) of this section.

(b) The director shall use the same standards of review established in subsection (2) of this section.

(c) The director shall:

1. Confirm the decision of the reviewing officer;

2. Reverse the determination on account of incorrect conclusions of law; or

3. Remand the matter to the council for further proceedings.

(d) The director shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

Section 9. Revocation of Owners' Certifications. (1) If, after obtaining final certification of rehabilitation, the council determines that the rehabilitation was not undertaken as represented by the owner in the applications, amendments, or supporting documentation, or the owner upon obtaining final certification undertook disqualifying work, the council may revoke a certification by giving written notice to the owner.

(2) The owner may file an appeal, pursuant to Section 8 of this administrative regulation.

(3) If the owner fails to file a timely appeal, the final certification of rehabilitation shall be revoked.

Section 10. Fees for Processing Rehabilitation Certification Requests. (1) Payment of fees for review of Parts 2 and 3 shall be filed with the council when applications are filed and are nonrefundable. Certification shall not be issued until the appropriate remittance is received. Payment shall be made by check or money order payable to the Kentucky State Treasurer.

(2) For tax credits under KRS 171.397, fees for reviewing rehabilitation certification requests of owner-occupied residential property, commercial and other buildings shall be charged in accordance with the following schedule. If a Part 2 application is denied, there shall not be a charge for a Part 3 review.

Rehabilitation Costs for Owner-Occupied Residences, Commercial and Other Buildings	Part 2 Review Fee	Part 3 Review Fee
\$20,000 - \$50,000	\$150	\$150
\$50,001 - 100,000	\$250	\$250
\$100,001 - \$250,000	\$375	\$375
250,001 - \$500,000	\$500	\$500
\$500,001 - \$6,000,000	.15% of estimate eligible costs and expenses	.15% of estimate eligible costs and expenses
Over \$6,000,000	\$9,000	\$9,000

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

(a) "Certification Application Part 1-Evaluation of National Register Status", KHC Form TC-1, Rev. 2022;

(b) "Certification Application Part 2-Description of Rehabilitation", KHC Form TC-2, Rev. 2022;

(c) "Certification Application Part 3-Request for Certification of Completed Work", KHC Form TC-3, Rev. 2022;

(d) "Certification Application-Continuation/Amendment", KHC Form TC-2a, Rev. 2022; and

(e) "Summary of Investment and Election of Credit", KHC Form TC-4, Rev. 2022;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Heritage Council, 410 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material is also available on the Council's web site at <https://heritage.ky.gov/historic-buildings/rehab-tax-credits/Pages/guides.aspx>.

CRAIG POTTS, Executive Director

MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: April 29, 2022

FILED WITH LRC: April 29, 2022 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27, 2022, at Kentucky Heritage Council at 410 High Street, Frankfort, Kentucky 40601. 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 June 30, 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: Craig Potts, Executive Director, 410 High Street, Frankfort, Kentucky 40601, phone (502) 564-7005, fax (502) 564-5820, email craig.potts@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Craig Potts

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the framework to implement the Kentucky Historic Rehabilitation Tax Credit program. It was anticipated that a new regulation reflecting significant changes made to the corresponding KRS during the 2021 legislative session would be adopted in advance of the current KAR's expiration in February 2022. That deadline could not be met. Included within this regulation is a fee structure that has not been increased since the program's implementation in 2005. Addressing this problem along with updates to the program's implementation and management is the focus of this proposed administrative regulation change.

(b) The necessity of this administrative regulation: This emergency regulation reinstates and updates a long-standing but outdated (and recently expired) version. If not corrected, the newly expanded/enhanced Kentucky Historic Preservation Tax Credit Program's implementation will remain at risk. Kentucky currently has one of the lowest fee structures for state historic tax credit review in the United States. This is largely because we have not revised our rates in many years despite a wide variety of changes in the marketplace and the actual financial cost to the agency. The Kentucky Historic Preservation Tax Credit program has become very popular since the program was adopted in 2005, and the amount of work required for staff reviews (particularly for multi-million dollar rehabilitation projects) has increased dramatically. Furthermore, the Kentucky Legislature increased the program cap from \$5M per year

to \$100M per year in the 2021 legislative session which is anticipated to significantly increase the size and complexity of the workload in future years. We therefore propose to raise our review fees to be more in-line with industry standards and peer states and to account for the financial burden it places on the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The basic structure of the administrative regulation remains largely unchanged in this proposal. It is slightly simplified in that it provides one tiered fee for all property and applicant types instead of two. KRS 171.397 provides that the Kentucky Heritage Council can impose fees for processing applications for tax credits, not to exceed the actual cost associated with processing the applications. The proposal is based on 1) staff time/cost 2) direct expense related to travel, mailings, technology infrastructure, software, etc. 3) fees charged for Federal Tax Credit review (federal counterpart program), and 4) fees charged by other states. Estimated cost to the Kentucky Heritage Council for implementing the current tax credit program (capped at \$5M per year) is \$120 - \$150k per year while the estimated current income from fees is \$68k per year. This does not consider future costs to the agency when the \$100M program cap goes into effect on July 1, 2022 or any additional enhancements to the program that are likely to result from the current legislative session.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Current funding levels are not sufficient to maintain adequate levels of staffing/service to carry out the program efficiently or effectively. Increasing our fee revenue will support the delivery of service including review/processing capacity.

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

(a) How the amendment will change this existing administrative regulation: Tiered fee that has been in place since 2005 would be increased. It also includes several clarifications and adds a review component for projects that are not being directly incentivized by the Kentucky Historic Preservation Tax Credit program. Projects that have been largely or fully completed in advance of an application being submitted are not motivated by the incentive and should therefore be excluded. Furthermore, these projects have often implemented design decisions outside of the review and approval process that do not conform to the program requirements. This change to the regulation attempts to curtail or at least limit post project reviews that have little to no opportunity for meaningful consultation.

(b) The necessity of the amendment to this administrative regulation: This emergency regulation reinstates and updates a long-standing but outdated (and recently expired) version. If not corrected, the newly expanded/enhanced Kentucky Historic Preservation Tax Credit Program's implementation will remain at risk. The Kentucky Heritage Council has needed a fee increase for many years to support the administration of this program. The current staffing levels are unsustainable and our delivery of service to our constituents has suffered. The 20-fold increase to the program's cap makes this fee increase even more imperative. Furthermore, it is important that this program remain an incentive for rehabilitation. The agency has experienced issues over the years with applications that are too complete for meaningful consultation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 171.397 provides that the Kentucky Heritage Council can impose fees for processing applications for tax credits, not to exceed the actual cost associated with processing the applications.

(d) How the amendment will assist in the effective administration of the statutes: Current funding levels are not sufficient to maintain adequate levels of staffing/service to carry out the program efficiently. Increasing our fee revenue will support the delivery of service including review/processing capacity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All of the above could be affected by this revised administrative regulation. The Kentucky Historic Preservation Tax Credit is an incentive program and fully optional however, so no one would be required to pay the higher fee unless they chose to

participate. State Government, and namely the Kentucky Heritage Council, would greatly benefit from fees that would better address the direct and indirect administrative cost to the agency.

(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 new action. The Part 1 and Part 2 Review Fee would be higher but the process would remain largely unchanged. An exception would be the option of the council to reject a project as ineligible due to substantial levels of completeness.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The higher review fee is tied to the level of incentive being received by the applicant. The incentive is based on expenditure, so a \$30M project receiving a \$6M Historic Tax Credit will require significantly more review time and coordination than a small project that would be charged (as it is now) a smaller review fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): We have had many conversations with developers and other users of this incentive program about an efficient review process. They consistently tell us that they would be happy to pay more in review fees if that meant we could better administer the program. These funds will support our capacity and provide applicants with better accessibility to staff and support faster review times. This will help projects that are often time sensitive receive the approval needed to move forward.

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

(a) Initially: Minor change. No cost anticipated.

(b) On a continuing basis: Minor change. No cost anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Minor change. No additional funding needed to administer the administrative regulation change.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. This administrative regulation change would directly increase existing fees.

(9) TIERING: Is tiering applied? The Kentucky Historic Preservation Tax Credit was implemented in 2005, and with the exception of owner-occupied projects, this incentive can often be utilized in tandem with the federal credit. Key provisions are: 30% of qualified rehabilitation expenses for owner-occupied residential properties. A minimum investment of \$20,000 is required, with the total credit not to exceed \$60,000 20% of qualified rehabilitation expenses for all other properties, requiring a minimum investment of \$20,000 or the adjusted basis, whichever is greater. The total credit for a project must not exceed \$400,000. "Other" properties include commercial and industrial buildings, income-producing properties, historic landscapes and properties owned by governments and non-profit organizations. Those eligible to apply for the credit include: Individuals, Businesses, Non-profit organizations, Governments. "First purchaser" of a principal residence following rehabilitation: Currently the amount of historic preservation tax credits allowed for all taxpayers for each calendar year is \$5 million. If that limit is exceeded by approved projects, an apportionment formula will be applied to determine the amount of the credit that will be awarded per project. As a result, the final credit awarded to each project may be less than the entire percentage for which the project is eligible. With the program cap increase from \$5 million to \$100 million in the last legislative session, it is unlikely that an apportionment formula will have to be applied.

(1) What 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 is an incentive program that is not mandatory for any public or private entity to take part in. That said, local governments may participate and earn a transferable tax credit that can be monetized. Local governments currently pay a fee to process Historic Preservation Tax Credit applications. That fee would increase for them as well as private sector applicants.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.397(12) and (14) authorizes the Kentucky Heritage Council to promulgate administrative regulations to implement the certified historic structures rehabilitation tax credit and to impose fees for tax credit applications.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is a relatively minor change to an optional incentive program. No effect anticipated other than a higher and more reasonable fee schedule to support the administration of this popular program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unsure. We anticipate our workload to increase by at least three times the current amount due to legislative increases in the program cap. Additional revenue will be tied to the number of applications received in a given 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? Unsure. We anticipate our workload to increase by at least three times the current amount due to legislative increases in the program cap. Additional revenue will be tied to the number of applications received in a given year.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: The proposed administrative regulation change would increase the fee at all investment levels to support the basic administration of the program. The number, type and size and investment level of projects received for review from year to year varies dramatically. Most projects are anticipated to be on the low end of the tier meaning that the additional fee will be small on a per project basis. Looking at the program as a whole however, the additional fees should better cover the costs to the agency that are not being covered by the existing tier of fees.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This will result in no cost savings for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This will result in no cost savings for regulated entities.

(c) How much will it cost the regulated entities for the first year? Variable. This is a fee attached to an optional incentive program. Costs to regulated entities are directly tied to the financial benefit they will receive from the Kentucky Historic Preservation Tax Credit program.

(d) How much will it cost the regulated entities for subsequent years? Variable. This is a fee attached to an optional incentive program. Costs to regulated entities are directly tied to the financial

benefit they will receive from the Kentucky Historic Preservation Tax Credit program.

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

Cost Savings (+/-): 0

Expenditures (+/-): 0

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. Not applicable. There is no additional cost to charge and/or process the fees.

**STATEMENT OF EMERGENCY
787 KAR 1:360E**

This emergency amended administrative regulation is being promulgated in order to meet an imminent threat to public welfare. For unemployment insurance claims filed between January 27, 2020 and December 31, 2020, KRS 341.413 provides the Labor Cabinet Secretary with the authority to waive overpayments of unemployment insurance benefits upon the request of alleged overpayment recipients if the recipient can demonstrate certain criteria. 787 KAR 1:360 was promulgated to establish definitions and procedures for waiving overpayments pursuant to KRS 341.413. Notwithstanding KRS 341.413, on April 13, 2022, the Kentucky General Assembly passed 2022 R.S. HB 1. Part I, Section D, Subsection 7(6) on page 63 of 2022 R.S. HB 1 authorizes the Labor Cabinet Secretary to waive an overpayment of benefits for unemployment insurance claims filed between January 27, 2020 and September 6, 2021. This amendment to 787 KAR 1:360 is being filed on an emergency basis so that the Office of Unemployment Insurance can immediately begin work on waiver requests arising out of alleged overpayments from claims filed between January 1, 2021 through September 6, 2021. This emergency amended administrative regulation will be replaced by an ordinary amended administrative regulation, which is being filed contemporaneously herewith, in order to conform with the new claim filing timeframe specified in 2022 R.S. HB 1. The companion ordinary amended administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
JAMES W. LINK, Secretary
BUDDY HOSKINSON, Executive Director

**LABOR CABINET
Office of Unemployment Insurance
(Emergency Amendment)**

787 KAR 1:360E. Overpayment waivers.

EFFECTIVE: April 28, 2022

RELATES TO: KRS 341.413, 2022 R.S. HB 1[2021 Ky. Acts ch. 16, sec.2]

STATUTORY AUTHORITY: KRS 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. For unemployment insurance claims filed between January 27, 2020 and December 31, 2020, KRS 341.413[2021 Ky. Acts ch. 16, sec.2] authorizes the secretary to waive overpayments of unemployment insurance benefits if the secretary, upon an alleged overpayment recipient's waiver request, finds the overpayment was made without fault on the part of the recipient and [if-]recovery [of-]would be contrary to equity and good conscience. Notwithstanding KRS 341.413, 2022 R.S. HB 1 authorizes the secretary to waive an overpayment of benefits for

unemployment insurance claims filed between January 27, 2020 and September 6, 2021. This administrative regulation establishes definitions and procedures for waiving overpayments pursuant to KRS Chapter 341, KRS 341.413, and 2022 R.S. HB 1[and Ky. Acts ch. 16, sec.2].

Section 1. Definitions.

(1) "Benefits" means benefits as defined by KRS 341.020(4).

(2) "Financial hardship" means:

(a) An individual or that individual's immediate family has experienced at least a fifty (50) percent reduction in gross earned income or loss of employment; or

(b) That, as a result of the recovery of the overpayment of the benefit, the individual is unable to meet daily living expenses, including expenses for food, clothing, rent, utilities, insurance, job or job search-related transportation expenses, and medical expenses.

(3) "Office" means the Office of Unemployment Insurance within the Kentucky Labor Cabinet.

(4) "Office error" means:

(a) Errors in computing the benefit rate;

(b) Incorrect weekly payment due to a failure to consider a deductible amount that was properly reported by a claimant;

(c) Payment beyond the expiration of the benefit year;

(d) Payment in excess of the maximum benefit amount;

(e) Payment under an incorrect program;

(f) Retroactive notice of nonmonetary determinations, except that a determination that the claimant has committed fraud is not considered "office error";

(g) Monetary redeterminations;

(h) Payment during a period of disqualification;

(i) Payment to a wrong claimant; or

(j) Erroneous payments resulting from human error in the data entry process.

(5) "Secretary" means the Secretary of the Kentucky Labor Cabinet.

Section 2. Waiver Request. An individual shall make a written request for waiver of a determined overpayment within thirty (30) days of the date of the notification that the individual has been overpaid unemployment insurance benefits.

Section 3. Waivers. Upon receipt of an alleged overpayment recipient's request for an overpayment waiver, the secretary shall issue a waiver of the alleged overpayment if the secretary determines that:

(1) The overpayment was made pursuant to Section 4 of this administrative regulation without fault on the part of the recipient; and

(2) Recovery would be contrary to equity and good conscience as established in Section 5 of this administrative regulation.

Section 4. No-fault Determination. For purposes of Section 3(1) of this administrative regulation, the secretary shall make a determination that the alleged overpayment was made without fault on the part of the recipient if the overpayment of benefits resulted from:

(1) "Office error" as defined by Section 1 of this administrative regulation; or

(2) Auto-payment of benefits.

Section 5. Equity and Good Conscience Determination. For purposes of Section 3(2) of this administrative regulation, the secretary shall make a finding that a recovery of an alleged overpayment is contrary to equity and good conscience if an individual demonstrates that:

(1) Recovery would cause financial hardship to the person from whom it is sought;

(2) The alleged overpayment recipient can show, regardless of the [the-]individual's financial circumstances, that due to the notice that the payment would be made or because of the incorrect payment, the individual has relinquished a valuable right or changed positions for the worse. This may be shown if the

recipient has made substantial necessary purchases related to daily living expenses, expended substantial necessary funds on daily living expenses, or failed to seek other benefits in reliance upon the receipt of benefits; or

(3) Recovery could be unconscionable, unjust, or unfair under the circumstances.

BUDDY HOSKINSON, Executive Director

APPROVED BY AGENCY: April 26, 2022

FILED WITH LRC: April 28, 2022 at 10:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amended administrative regulation shall be held on June 22, 2022, at 1:00 p.m. Eastern Time at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. 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 June 30, 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: Oran McFarlan, Staff Attorney, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone 502-564-1490, email oran.mcfarlan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Oran McFarlan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedures for waiving overpayments of unemployment insurance claims.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out KRS 341.413 and 2022 R.S. HB 1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions and procedures for waiving overpayments of unemployment insurance claims pursuant to KRS Chapter 341, KRS 341.413, and 2022 R.S. HB 1.

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

(a) How the amendment will change this existing administrative regulation: In compliance with 2022 R.S. HB 1, this emergency amendment expands the timeframe in which the secretary is authorized to waive an overpayment of benefits for unemployment insurance claims from January 27, 2020 – December 31, 2020 to January 27, 2020 – September 6, 2021.

(b) The necessity of the amendment to this administrative regulation: This emergency amendment is needed to conform to the expanded claim filing timeframe stated in 2022 R.S. HB 1 (i.e., January 27, 2020 – September 6, 2021).

(c) How the amendment conforms to the content of the authorizing statutes: This emergency amendment provides the procedures for waiving overpayments of unemployment insurance claims filed between January 27, 2020 and September 6, 2021.

(d) How the amendment will assist in the effective administration of the statutes: This emergency amendment provides the secretary and Office of Unemployment Insurance staff with the necessary definitions and procedures for waiving overpayments of unemployment insurance claims filed between January 27, 2020 and September 6, 2021

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects unemployment insurance benefit recipients in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows the Labor Cabinet Secretary to waive overpayments of unemployment insurance benefits.

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

(a) Initially: \$194,560.

(b) On a continuing basis: \$93,600.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current federal funding will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All unemployment insurance benefit overpayment recipients are treated equally.

FISCAL NOTE

(1) What 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 Office of Unemployment Insurance within the Kentucky Labor Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 341.413 and 2022 R.S. HB 1.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No 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? \$194,560.

(d) How much will it cost to administer this program for subsequent years? \$93,600.

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

Revenues (+/-): None.

Expenditures (+/-): See above.

Other Explanation: This amendment does not impose any additional expenditures to employers.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and eligible claimants that request waiver of an alleged overpayment of unemployment insurance benefits may have the alleged overpayment amount waived by the Office of Unemployment Insurance pursuant to the criteria and procedures contained in 787 KAR 1:360. This amendment does not impose any additional expenditures to employers.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and eligible claimants that request waiver of an alleged overpayment of unemployment insurance benefits may have the alleged overpayment amount waived by the Office of Unemployment Insurance pursuant to the criteria and procedures contained in 787 KAR 1:360. This amendment does not impose any additional expenditures to employers.

(c) How much will it cost the regulated entities for the first year? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

(d) How much will it cost the regulated entities for subsequent years? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

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

Cost Savings (+/-): See above.

Expenditures (+/-): No increase.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] It is not anticipated that this amendment will have an overall negative or adverse economic impact of \$500,000 or more on the Office of Unemployment Insurance.

**STATEMENT OF EMERGENCY
902 KAR 2:020E**

This emergency administrative regulation is being promulgated in response to the changes to Section 18115 of the Coronavirus Aid, Relief, and Economic Security Act (CARES) (Pub.L. 116-136) related to the COVID-19 pandemic response. Section 18115 of the CARES Act has been amended, effective April 4, 2022, to reduce the COVID-19 testing reporting requirement. Laboratory based Nucleic Acid Amplification Test (NAAT) testing is now the only type of SARS-CoV-2 testing for which both positive and negative test results must be reported. Only positive test reports are required for all other required testing; reporting for antibody testing is optional. This emergency administrative regulation will provide immediate regulatory relief to healthcare facilities and clinicians by reducing the COVID-19 reporting requirements as now permitted by the Department for Health and Human Services. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to implement the change in the CARES Act as noted in the guidance issued March 8, 2022, by the Secretary of

the Department for Health and Human Services. This guidance is included as the documentary evidence to support this emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation. This emergency administrative regulation differs from the ordinary administrative regulation in that it cites to the CARES Act as a related federal law and contains a federal mandate analysis comparison.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(Emergency Amendment)**

902 KAR 2:020E. Reportable disease surveillance.

EFFECTIVE: April 26, 2022

RELATES TO: KRS 214.645, 214.625(5)(c)5, 214.990(1), 215.520, 216B.015, 258.065, 258.990, 311.282, 311.571, 315.010, 321.181(4), 333.020, 333.130, Pub.L. 116-136 Section 18115

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 211.180(1)(a), 214.010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180(1)(a) authorizes the cabinet to implement a statewide program for the detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases that are transmissible to man, and other diseases and health hazards that can be controlled. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet. This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases and to permit an accurate assessment of the health status of the commonwealth.

Section 1. Definitions. (1) "Acid fast bacilli" or "AFB" means the mycobacteria that, if stained, retains color even after having been washed in an acid solution and can be detected under a microscope in a stained smear.

(2) "Health facility" is defined by KRS 216B.015(13).

(3) "Health professional" means a professional licensed under KRS Chapters 311 through 314.

(4) "Healthcare-associated infection" or "HAI" means an infection acquired by a person while receiving treatment for a separate condition in a health care setting.

(5) "Kentucky public health advisory" means a notification to health professionals, health facilities, and laboratories subject to this administrative regulation identifying a new health threat that warrants reporting through the procedures of this administrative regulation.

(6) "Laboratory-confirmed influenza" means influenza diagnosed through testing performed using:

(a) Reverse transcriptase polymerase chain reaction (RT PCR);

(b) Nucleic acid detection; or

(c) Viral culture.

(7) "Medical laboratory" is defined by KRS 333.020(3).

(8) "National Healthcare Safety Network" or "NHSN" means the nation's most widely used healthcare-associated infection (HAI) tracking system as provided to medical facilities by the Centers for Disease Control and Prevention (CDC).

(9) "National reference laboratory" means a laboratory located outside of Kentucky that is contracted by a Kentucky health professional, laboratory, or health facility to provide laboratory testing.

(10) "Novel influenza A virus" means an influenza virus that

causes human infection but is different from the seasonal human influenza A virus subtypes and includes viruses predominately of avian and swine origin.

(11) "Nucleic acid amplification test" or "NAAT" means the laboratory test used to target and amplify a single deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) sequence, usually for detecting a microorganism.

(12) "Outbreak" means:

(a) Two (2) or more cases, including HAIs, that are epidemiologically linked or connected by person, place, or time; or

(b) A single case of an HAI not commonly diagnosed.

(13) "Pharmacist" is defined by KRS 315.010(17).

(14) "Post-exposure prophylaxis" or "PEP" means taking an antiretroviral medicine after being potentially exposed to HIV to prevent becoming infected.

(15) "Pre-exposure prophylaxis" or "PrEP" means daily medicine intended to reduce the chance of getting HIV.

(16) "Select agent" means a biological agent or toxin that could pose a severe threat to public health, plant health, animal product, or plant product as determined by the National Select Agent Registry (NSAR) at www.selectagents.gov.

(17) "Veterinarian" is defined by KRS 321.181(4).

Section 2. Notification Standards. (1) Health professionals and facilities.

(a) A health professional or a health facility shall give notification if:

1. The health professional or a health facility makes a probable diagnosis of a disease specified in Section 3, 6, 7, 8, 9, 12, 16, 17, 18, or 19 of this administrative regulation; and

2. The diagnosis is supported by:

a.(i) Clinical or laboratory criteria; and

(ii) Case classifications published by the Centers for Disease Control and Prevention at [https://ndc.services.cdc.gov/\[www.cdc.gov/nndss\]](https://ndc.services.cdc.gov/[www.cdc.gov/nndss]); or

b. A health professional's medical opinion that the disease is present.

(b) A single report by a health facility of a condition diagnosed by a test result from the health facility's laboratory shall constitute notification on behalf of the health facility and its laboratory.

(c) A health facility may designate an individual to report on behalf of the health facility's laboratory, pharmacy, and the health facility's other clinical entities.

(d) Notification shall be given to the local health department serving the county in which the patient resides.

(e) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(f) The reporting health professional or health facility shall submit:

1. Information required in Section 5(6) of this administrative regulation; and

2. Clinical, epidemiologic, and laboratory information pertinent to the disease including sources of specimens submitted for laboratory testing.

(2) Medical Laboratories.

(a) A laboratory test result that indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, 6, 7, 8, 9, 12, 16, 17, 18, or 19 of this administrative regulation shall be reported to the local health department serving the county in which the patient resides.

(b) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(c) The reporting laboratory shall submit the information required in Section 5(6) of this administrative regulation.

(3) National Reference Laboratories.

(a) A test result performed by a national reference laboratory that indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, 6, 7, 8, 9, 12, 16, 17, 18, or 19 of this administrative regulation shall be reported by the director of a medical laboratory, a health facility, or the health professional that referred the test to the national

reference laboratory to the local health department serving the county in which the patient resides.

(b) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(c) The report shall include the information required by Section 5(6) of this administrative regulation.

Section 3. Submission of Specimens to the Kentucky Department for Public Health Division of Laboratory Services. (1) A medical laboratory and a national reference laboratory in receipt of diagnostic specimens originating from the Commonwealth of Kentucky shall send direct specimens or pure clinical isolates for diseases established in subsection (5) of this section to the Division of Laboratory Services for primary or confirmatory testing and related studies.

(2) A medical laboratory or national reference laboratory using non-culture techniques to identify bacterial agents of diarrheal disease, such as enzyme immunoassays (EIAs) or molecular assays, shall attempt isolation of the etiologic agent identified. Pure clinical isolates shall be submitted to the Division of Laboratory Services.

(3) If the culture attempts do not produce a clinical isolate, the direct specimen, submitted in the appropriate preservative, shall be sent to the Division of Laboratory Services. A submitting laboratory shall provide the name of the etiologic agent detected by the non-culture technique at the time of specimen submission.

(4) A medical laboratory performing this test shall continue to follow the state's requirement for the submission of appropriate materials to the state public health laboratory.

(5) A medical or national reference laboratory shall submit pure isolates or, if not available, the direct specimen from the following diseases to the Division of Laboratory Services:

(a) Botulism, with prior approval from the Division of Epidemiology for testing;

(b) Brucellosis;

(c) Campylobacteriosis;

(d) Candida auris;

(e) Carbapenem-resistant Acinetobacter;

(f) Carbapenem-resistant Enterobacteriaceae;

(g) Carbapenem-resistant Pseudomonas;

(h) Cholera and diseases caused by other Vibrio species;

(i) Diphtheria;

(j) Escherichia coli O157:H7;

(k) Hemolytic Uremic Syndrome (HUS) – Post Diarrheal;

(l) Listeriosis;

(m) Measles;

(n) Meningococcal infections;

(o) Rabies, animal;

(p) Rubella;

(q) Salmonellosis;

(r) Shiga toxin-producing E. coli (STEC);

(s) Shigellosis;

(t) Tuberculosis (TB);

(u) Tularemia;

(v) Typhoid fever;

(w) Vancomycin-intermediate Staphylococcus aureus;

(x) Vancomycin-resistant Staphylococcus aureus; and

(y) Zika, with prior approval from the Division of Epidemiology for testing.

(6) All direct specimens or clinical isolates from enteric disease shall be submitted within seventy-two (72) hours from collection.

Section 4. Laboratory Testing and Submission of Specimens to the Division of Laboratory Services for the Identification of M. tuberculosis. (1) For the identification of M. tuberculosis, a medical laboratory or national reference laboratory shall perform AFB smear and culture, regardless of rapid molecular testing results (NAAT).

(2) Rapid molecular testing shall be performed for the identification of M. tuberculosis on:

(a) Any diagnostic specimen with an AFB smear positive result; or

(b) Any specimen that originates from an individual with clinical or epidemiological evidence suggesting active tuberculosis.

(3) If rapid molecular testing cannot be performed by the medical laboratory or national reference laboratory, the diagnostic specimen shall be sent to the Division of Laboratory Services.

(4) A medical laboratory or national reference laboratory that has a diagnostic specimen test positive for *M. tuberculosis* by rapid molecular testing shall send the remainder of that specimen to the Division of Laboratory Services.

(5) Any diagnostic specimen found to be positive for *M. tuberculosis* by rapid molecular testing or culture testing shall be reported in accordance with Section 7 of this administrative regulation.

Section 5. Reporting Classifications and Methods. (1) Immediate reporting.

(a) A report required by Section 12(1) and (2) of this administrative regulation to be made immediately shall be:

1. Made by telephone to the local health department serving the county in which the patient resides; and

2. Followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

(b) Upon receipt of a report for a disease requiring immediate reporting, the local health department shall:

1. Notify the Kentucky Department for Public Health by telephone; and

2. Assist the department in carrying out a public health response.

(c) Weekend, evening, or holiday immediate notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

(d) For the protection of patient confidentiality, a report using the emergency number shall include:

1. The name of the condition being reported; and

2. A telephone number that can be used by the department to contact the reporting health professional or health facility.

(2) Urgent reporting.

(a) A report made within twenty-four (24) hours as required by Section 6 of this administrative regulation shall be:

1. Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and

2. If submitted by telephone, followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

(b) Upon receipt of a report for a disease requiring urgent reporting, the local health department shall:

1. Notify the Kentucky Department for Public Health; and

2. Assist the department in carrying out a public health response.

(c) Weekend, evening, or holiday urgent notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

(d) For the protection of patient confidentiality, notification using the emergency number shall include:

1. The name of the condition being reported; and

2. A telephone number that can be used by the department to contact the reporting health professional or health facility.

(3) Priority reporting.

(a) A report made within one (1) business day as required by Section 7, 11, 12(3), 17(4), or 18 of this administrative regulation shall be:

1. Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and

2. If submitted by telephone, followed up by electronic or fax submission of a report to the local health department serving the county in which the patient resides within one (1) business day.

(b) Upon receipt of a report for a disease requiring priority reporting, a local health department shall:

1. Investigate the report and carry out public health protection measures; and

2. Notify the Kentucky Department for Public Health of the case by electronic or fax submission within one (1) business day.

(c) The reporting health department may seek assistance in carrying out public health measures from the Kentucky Department for Public Health.

(4) Routine reporting.

(a) A report made within five (5) business days, as required by Section 8, 9, 10, 13(1), 16(1), 17(7), or 20(1) of this administrative regulation, shall be made electronically, by fax, or by mail to the local health department serving the county in which the patient resides.

(b) Upon receipt of a report of a disease or condition requiring routine reporting, a local health department shall:

1. Make a record of the report;

2. Answer inquiries or render assistance regarding the report if requested by the reporting entity; and

3. Forward the report to the Kentucky Department for Public Health by electronic or fax submission of a report, or in writing within five (5) business days.

(5) General reporting. A report made within three (3) months, as required by Section 19 of this administrative regulation, shall be made electronically, by fax, or by mail.

(6) Reporting requirements.

(a) A report submitted by fax or by mail shall be made using one (1) of the following reporting forms:

1. EPID 200, Kentucky Reportable Disease Form;

2. EPID 250, Kentucky Reportable MDRO Form, to be used for priority reporting;

3. EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (aged five (5) years or less);

4. EPID 399, Perinatal Hepatitis B Prevention Form for Infants;

5. Adult HIV Confidential Case Report Form; or

6. Pediatric HIV Confidential Case Report Form.

(b) Case reports may be made electronically through the Kentucky Health Information Exchange. Electronic case reports shall include the information required by paragraph (c) of this subsection.

(c) Information to be reported. Except as provided in subsections (1)(d) and (2)(d) of this section, a report required by this administrative regulation shall include:

1. Patient name;

2. Date of birth;

3. Gender;

4. Race;

5. Ethnicity;

6. Patient address;

7. County of residence;

8. Patient telephone number;

9. Name of the reporting medical provider or facility;

10. Address of the reporting medical provider or facility; and

11. Telephone number of the reporting medical provider or facility.

(d)[(e)] A reporting health professional shall submit the information listed in this subsection and Section 2(1)(f) of this administrative regulation.

Section 6. Notifiable Infectious Conditions Requiring Urgent Notification. (1) Notification of the following diseases shall be considered urgent and shall be made within twenty-four (24) hours:

(a) Anthrax;

(b) Botulism;

(c) Brucellosis (multiple cases, temporally or spatially clustered);

(d) Diphtheria;

(e) Hepatitis A, acute;

(f) Measles;

(g) Meningococcal infections;

(h) Middle East Respiratory Syndrome-associated Coronavirus (MERS-CoV) disease;

- (i) Multi-system Inflammatory Syndrome in Children (MIS-C);
- (j) Novel influenza A virus infections;
- (k) Plague;
- (l) Poliomyelitis;
- (m) Rabies, animal;
- (n) Rabies, human;
- (o) Rubella;
- (p) Severe Acute Respiratory Syndrome-associated Coronavirus (SARS-CoV) disease;
- (q) Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19) in accordance with subsection (2) of this section;
- (r) Smallpox;
- (s) Tularemia;
- (t) Viral hemorrhagic fevers due to:
 1. Crimean-Congo Hemorrhagic Fever virus;
 2. Ebola virus;
 3. Lassa virus;
 4. Lujo virus;
 5. Marburg virus; or
 6. New world arenaviruses including:
 - a. Guanarito virus;
 - b. Junin virus;
 - c. Machupo virus; and
 - d. Sabia virus; and
 - (u) Yellow fever.

(2) To track the spread of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2), the virus that causes COVID-19, the following reporting is required:

- (a) Laboratory reports of:
 1. Positive and negative test results for SARS-CoV-2 viral detection using [~~antigen or~~]Nucleic Acid Amplification Test (NAAT), including polymerase chain reaction (PCR);
 2. Positive test results for SARS-CoV-2 viral detection using antigen immunoassays; and
 3. SARS-CoV-2 molecular sequencing[; and
 - ~~3. Positive test results for IgM or IgG antibodies to SARS-CoV-2 nucleocapsid protein].~~
- (b) Health professional case report when:
 1. A COVID-19 diagnosis of a patient for whom a laboratory report is not independently submitted;
 2. A COVID-19 diagnosis of a patient is admitted to an inpatient medical facility; or
 3. There is a COVID-19 associated mortality.

Section 7. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Priority Notification. Notification of the following diseases or conditions shall be considered priority and shall be made within one (1) business day:

- (1) Arboviral diseases, neuroinvasive and non-neuroinvasive, including:
 - (a) California serogroup virus diseases, including diseases caused by:
 1. California encephalitis virus;
 2. Jamestown Canyon virus;
 3. Keystone virus;
 4. La Crosse virus;
 5. Snowshoe hare virus; and
 6. Trivittatus viruses;
 - (b) Chikungunya virus disease;
 - (c) Eastern equine encephalitis virus disease;
 - (d) Powassan virus disease;
 - (e) St. Louis encephalitis virus disease;
 - (f) Venezuelan equine encephalitis disease;
 - (g) West Nile virus disease;
 - (h) Western equine encephalitis virus disease; and
 - (i) Zika virus disease or infection or the birth of a child to a mother who was Zika-positive or Zika-inconclusive during any stage of pregnancy or during the periconceptional period;
 - (2) Brucellosis (cases not temporally or spatially clustered);
 - (3) Campylobacteriosis;
 - (4) Carbon monoxide poisoning;
 - (5) Cholera;

- (6) Cryptosporidiosis;
- (7) Cyclosporiasis;
- (8) Dengue virus infections;
- (9) Escherichia coli O157:H7;
- (10) Foodborne disease outbreak;
- (11) Giardiasis;
- (12) Haemophilus influenzae invasive disease;
- (13) Hansen's disease (leprosy);
- (14) Hantavirus infection, non-Hantavirus pulmonary syndrome;
- (15) Hantavirus pulmonary syndrome (HPS);
- (16) Hemolytic uremic syndrome (HUS), post-diarrheal;
- (17) Hepatitis B, acute;
- (18) Hepatitis B infection in a pregnant woman;
- (19) Hepatitis B infection in an infant or a child aged five (5) years or less;
- (20) Newborns born to Hepatitis B positive mothers at the time of delivery;
- (21) Influenza-associated mortality;
- (22) Legionellosis;
- (23) Leptospirosis;
- (24) Listeriosis;
- (25) Mumps;
- (26) Norovirus outbreak;
- (27) Pertussis;
- (28) Pesticide-related illness, acute;
- (29) Psittacosis;
- (30) Q fever;
- (31) Rubella, congenital syndrome;
- (32) Salmonellosis;
- (33) Shiga toxin-producing E. coli (STEC);
- (34) Shigellosis;
- (35) Streptococcal toxic-shock syndrome;
- (36) Streptococcus pneumoniae, invasive disease;
- (37) Tetanus;
- (38) Toxic-shock syndrome (other than Streptococcal);
- (39) Tuberculosis;
- (40) Typhoid fever;
- (41) Varicella;
- (42) Vibriosis; and
- (43) Waterborne disease outbreak.

Section 8. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Routine Notification. Notification of the following diseases shall be considered routine and shall be made within five (5) business days:

- (1) Acute Flaccid Myelitis;
- (2) Anaplasmosis;
- (3) Babesiosis;
- (4) Coccidioidomycosis;
- (5) Creutzfeldt-Jakob disease;
- (6) Ehrlichiosis;
- (7) Hepatitis C, acute;
- (8) Hepatitis C infection in a pregnant woman;
- (9) Hepatitis C infection in an infant or a child aged five (5) years or less;
- (10) Newborns born to Hepatitis C positive mothers at the time of delivery;
- (11) Histoplasmosis;
- (12) Laboratory-confirmed influenza;
- (13) Lead poisoning;
- (14) Lyme Disease;
- (15) Malaria;
- (16) Spotted Fever Rickettsiosis (Rocky Mountain Spotted Fever);
- (17) Toxoplasmosis; and
- (18) Trichinellosis (Trichinosis).

Section 9. Notifiable Infectious Conditions Requiring Routine Notification by Electronic Laboratory Reporting. (1) Notification of the following shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business

days:

- (a) Hepatitis B laboratory test results, which shall:
 - 1. Be reported as positive or negative; and
 - 2. Include the serum bilirubin levels or serum alanine aminotransferase taken within ten (10) days of the test of a patient who has tested positive;
 - (b) Hepatitis C laboratory test results, which shall:
 - 1. Be reported as positive or negative; and
 - 2. Include the serum bilirubin levels or serum alanine aminotransferase taken within ten (10) days of the test of a patient who has tested positive; or
 - (c) Varicella laboratory test results reported as positive for:
 - 1. Isolation of varicella virus from a clinical specimen;
 - 2. Varicella antigen detected by direct fluorescent antibody test; or
 - 3. Varicella-specific nucleic acid detected by polymerase chain reaction (PCR).
- (2) Reports made pursuant to this section shall include a diagnosis.

Section 10. Multi-Drug Resistant Organisms and Other Organisms Requiring Routine Notification by Electronic Laboratory Reporting. (1) Notification of the following diseases shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:

- (a) *Clostridioides* (formerly *Clostridium*) *difficile* (*C. difficile*) identified from a positive laboratory test result for *C. difficile* toxin A or B (includes molecular assays {PCR} or toxin assays) or a toxin-producing organism detected by culture or other laboratory means performed on a stool sample;
- (b) Enterobacteriaceae species resistant to ceftazidime, ceftriaxone, or cefotaxime;
- (c) Methicillin-resistant *Staphylococcus aureus* (MRSA), which includes *S. aureus* cultured from any specimen that tests oxacillin-resistant, ceftazidime-resistant, or methicillin-resistant by standard susceptibility testing methods, or by a laboratory test that is FDA-approved for MRSA detection from isolated colonies. These methods may also include a positive result by any FDA-approved test for MRSA detection; and
- (d) Vancomycin-resistant *Enterococcus* species (VRE), only those identified to the species level, that are resistant to Vancomycin by standard susceptibility testing methods or by results from any FDA-approved test for VRE detection from specific specimen sources.

(2) The report of an organism under this section shall include the:

- (a) Date of specimen collection;
- (b) Source of specimen;
- (c) Susceptibility pattern; and
- (d) Name of the ordering health professional.

(3) Upon a test result performed by a medical laboratory that indicates infection with an agent associated with one (1) or more of the diseases or conditions or a multi-drug resistant organism specified in this section, the director of the medical laboratory shall electronically report the result to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) days.

(4) The report shall include a diagnosis.

Section 11. Multi-drug Resistant Organisms and Other Organisms Requiring Priority Reporting by EPID 250 and by Electronic Laboratory Reporting to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within One (1) Business Day. Notification of the following diseases shall be considered priority:

(1) *Candida auris* - Laboratory Criteria for Diagnosis shall include:

- (a) Confirmatory laboratory evidence for detection of *Candida auris* from any body site using either culture or a culture independent diagnostic test (for example, Polymerase Chain Reaction {PCR}); or
- (b) Presumptive laboratory evidence for detection of *Candida*

haemulonii from any body site using a yeast identification method that is not able to detect *Candida auris*, and either the isolate or specimen is not available for further testing, or the isolate or specimen has not yet undergone further testing;

(2) Carbapenem-resistant – *Acinetobacter* – Any *Acinetobacter* species testing resistant to imipenem, meropenem, or doripenem, with minimum inhibitory concentration (MIC) value greater than or equal to eight (8) µg/mL by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(3) Carbapenem-resistant Enterobacteriaceae (CRE) – Any Enterobacteriaceae species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to four (4) µg/mL, or ertapenem with MIC value greater than or equal to two (2) µg/mL, by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(4) Carbapenem-resistant – *Pseudomonas* – Any *Pseudomonas* species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to eight (8) µg/mL by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(5) Vancomycin-intermediate *Staphylococcus aureus* (VISA), which includes *S. aureus* cultured from any specimen having a MIC of four (4) to eight (8) µg/mL for vancomycin per standard laboratory methods; and

(6) Vancomycin-resistant *Staphylococcus aureus* (VRSA), which includes *S. aureus* cultured from any specimen having a MIC of greater than or equal to sixteen (16) µg/mL for vancomycin per standard laboratory methods.

Section 12. Newly Recognized Infectious Agents, HAI Outbreaks, Emerging Pathogens, and Pathogens of Public Health Importance. (1) The following shall be reported immediately by telephone to the Kentucky Department for Public Health:

- (a) A suspected incidence of bioterrorism caused by a biological agent;
 - (b) Submission of a specimen to the Kentucky Division of Laboratory Services for select agent identification or select agent confirmation testing; or
 - (c) An outbreak of a disease or condition that resulted in multiple hospitalizations or death.
- (2) An unexpected pattern of cases, suspected cases, or deaths that could indicate the following shall be reported immediately by telephone to the local health department in the county where the health professional is practicing or where the facility is located:
- (a) A newly-recognized infectious agent;
 - (b) An outbreak;
 - (c) An emerging pathogen that may pose a danger to the health of the public;
 - (d) An epidemic; or
 - (e) A noninfectious chemical, biological, or radiological agent.

(3) A report of the following shall be considered priority and shall be reported to the local health department in the county where the health professional is practicing or where the facility is located within one (1) business day:

- (a) Suspected *Staphylococcal* or other foodborne intoxication; or
 - (b) Salmonellosis or other foodborne or waterborne infection.
- (4) The local health department shall:
- (a) Investigate the outbreak or occurrence;
 - (b) Carry out public health protection measures to address the disease or condition involved; and
 - (c) Make medical and environmental recommendations to prevent future similar outbreaks or occurrences.
- (5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 13. Laboratory Surveillance. (1) Medical or national reference laboratory results for the following shall be considered routine:

- (a) Influenza virus isolates;
- (b) PCR-positive test results for influenza virus; and
- (c) DNA molecular assays for influenza virus.

(2) The report shall include specific laboratory information pertinent to the result.

(3) Upon request by the Kentucky Department for Public Health, a health facility laboratory or a medical laboratory shall report the number of clinical isolates and information regarding the antimicrobial resistance patterns of the clinical isolates at intervals no less frequently than three (3) months for:

- (a) *Acinetobacter baumannii* complex;
- (b) *Enterobacter cloacae* complex;
- (c) *Enterococcus* species;
- (d) *Escherichia coli*;
- (e) *Klebsiella oxytoca*;
- (f) *Klebsiella pneumoniae*;
- (g) *Pseudomonas aeruginosa*;
- (h) *Staphylococcus aureus*; or
- (i) An organism specified in a request that includes a justification of its public health importance.

(4) A facility that reports antimicrobial resistance (AR) data to the National Healthcare Safety Network (NHSN) AUR (Antimicrobial Use & Resistance) module shall meet this reporting requirement through NHSN reporting.

Section 14. Healthcare-Associated Infection Surveillance. (1) A health facility in Kentucky that participates in Centers for Medicare and Medicaid Services (CMS) reporting programs shall authorize the CDC to allow the Kentucky Department for Public Health to access health care-associated infection data reported to NHSN.

(2) The Kentucky Department for Public Health shall preserve patient confidentiality and shall not disclose to the public any patient-level data obtained from any health care facility.

(3) The Kentucky Department for Public Health may issue reports to the public regarding healthcare-associated infections in aggregate data form that:

- (a) May identify individual health care facilities; and
- (b) Shall comply with methodology developed by the CDC and CMS for national reporting of health care-associated infections.

(4) The Kentucky Department for Public Health may evaluate healthcare-associated infection data for accuracy and completeness.

Section 15. Antimicrobial Use Reporting. (1) A short-term acute-care hospital in Kentucky that participates in the CMS reporting programs shall report data on facility-wide inpatient antimicrobial use to the Kentucky Department for Public Health, Healthcare-Associated Infection/Antibiotic Resistance (HAI/AR) Prevention Program, on a quarterly basis. Critical access hospitals shall be exempt.

(2) Reporting deadlines shall be consistent with the CMS reporting program submission deadlines of data to the NHSN.

(3) The HAI/AR Prevention Program shall provide the specifications for data submission.

(4) Hospitals shall include aggregated antimicrobial use and patient day data for all inpatient units (facility-wide inpatient) included in the NHSN Laboratory-identified (LabID) MRSA Bacteremia reporting.

(5) The antimicrobial use numerator shall be days of therapy (DOTs) as defined by the NHSN Antimicrobial Use and Resistance (AUR) Module, available at <https://www.cdc.gov/nhsn/pdfs/pscmanual/11pscscurrent.pdf>.

(6) Total DOTs shall be submitted for each of the following antimicrobials:

- (a) Azithromycin;
- (b) Cefepime;
- (c) Ceftazidime;
- (d) Ceftriaxone;
- (e) Ciprofloxacin;
- (f) Clindamycin;
- (g) Daptomycin;
- (h) Ertapenem;
- (i) Imipenem;
- (j) Levofloxacin;
- (k) Linezolid;
- (l) Meropenem;

- (m) Moxifloxacin;
- (n) Piperacillin-tazobactam; and
- (o) Vancomycin.

(7) Total DOTs for the listed drugs shall include only administrations via the intravenous and digestive tract routes.

(8) The denominator for antimicrobial use reporting shall be patient days as defined by the NHSN LabID Module available at https://www.cdc.gov/nhsn/pdfs/pscmanual/12pscmodr_cdadcurrent.pdf.

(9) A hospital that reports antimicrobial use data to the NHSN AUR Module shall meet this reporting requirement through NHSN reporting.

Section 16. Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) Surveillance. (1) All case reports shall be submitted to the HIV/AIDS Surveillance Program of the Kentucky Department for Public Health, Division of Epidemiology and Health Planning, or its designee, within five (5) business days of diagnosis on one (1) of the following forms:

- (a) Adult HIV Confidential Case Report Form; or
- (b) Pediatric HIV Confidential Case Report Form.

(2) Health professionals and medical laboratories shall report:

(a) A positive test result for HIV, including tests with negative or indeterminate results that are part of a diagnostic testing algorithm whose overall interpretation is positive, and results from:

- 1. Any HIV antibody test;
- 2. Any HIV antigen test;
- 3. Any HIV Ribonucleic acid (RNA) or Deoxyribonucleic acid (DNA) test;
- 4. CD4+ assay including absolute CD4+ cell counts and CD4+%;
- 5. HIV genetic sequencing; or
- 6. HIV culture; or

(b) A diagnosis of AIDS that meets the definition of AIDS established within the CDC guidelines.

(3) A negative HIV test, if available, shall be submitted with the report required by subsection (2)(a) or (b) of this section.

(4) Any request for data related to HIV infection or AIDS shall be made to the Department for Public Health, Division of Epidemiology and Health Planning.

(5) A case report for a person with an HIV infection without a diagnosis of AIDS, or HIV infection with a diagnosis of AIDS shall include:

- (a) The patient's full name;
- (b) The patient's complete address;
- (c) Date of birth using the format MMDDYYYY;
- (d) Gender;
- (e) Race;
- (f) Ethnicity;
- (g) Risk factors as identified by CDC;
- (h) County of residence;
- (i) Name of provider and facility submitting report including contact information;

(j) Specimens collected;

(k) Date and type of HIV test performed using the format MMDDYYYY;

- (l) Results of CD4+ cell counts and CD4+%;
- (m) Results of viral load testing;
- (n) Results of RNA, DNA, HIV culture, HIV antigen, and HIV antibody, if performed;
- (o) Results of TB testing, if available;
- (p) Any documented HIV negative test, if available;
- (q) History of PrEP or PEP treatment, if available;
- (r) Antiretroviral treatment, if available;
- (s) HIV status of the person's partner, spouse, or children, as applicable;

- (t) Current pregnancy status for females;
- (u) Opportunistic infections diagnosed; and
- (v) Date of onset of illness.

(6) A report of pregnancy and delivery for a female diagnosed with HIV disease shall include:

- (a) All HIV diagnostic testing and results associated with the determination of HIV status of the infant, including tests with

negative or indeterminate results that are part of a diagnostic testing algorithm and if final result is negative; and

(b) Any HIV treatment prescribed to an infant.

(7) A report of AIDS shall be made whether or not the patient has been previously reported as having an HIV infection.

(8) If the patient has not been previously reported as having an HIV infection, the AIDS report shall also serve as the report of HIV.

Section 17. Sexually Transmitted Disease (STD). (1) Notification of a probable diagnosis of an STD as specified in subsection (4) or (7) of this section shall be made.

(2) The report shall provide:

(a) Pregnancy status; and

(b) Clinical, epidemiologic, laboratory, and treatment information pertinent to the disease.

(3) Upon a laboratory test result that indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in subsection (4) or (7) of this section, a medical laboratory shall report to the Kentucky Department for Public Health information required by Section 5(6)(c)(b) of this administrative regulation.

(4) Sexually Transmitted Diseases Requiring Priority Notification. A report of the following shall be considered priority and shall be made within one (1) business day:

(a) Each pregnant female who has tested positive for syphilis regardless of stage; or

(b) Syphilis - primary, secondary, or early latent.

(5) Upon receipt of a report for a disease or condition specified in subsection (4) of this section, a local health department shall:

(a) Investigate the report;

(b) Carry out public health protection measures to address the disease or condition; and

(c) Forward the report to the Kentucky Department for Public Health within one (1) business day.

(6) The local health department may seek assistance from the Kentucky Department for Public Health.

(7) Sexually Transmitted Diseases Requiring Routine Notification. A report of the following shall be considered routine and shall be made within five (5) business days:

(a) Chancroid;

(b) Chlamydia trachomatis infection;

(c) Gonorrhea;

(d) Granuloma inguinale;

(e) Lymphogranuloma venereum; or

(f) Syphilis, other than primary, secondary, early latent, or congenital.

(8) Upon receipt of a report for a disease or condition specified in subsection (7) of this section, a local health department shall:

(a) Make a record of the report using Form EPID 200, Kentucky Reportable Disease Form;

(b) Forward the report to the Kentucky Department for Public Health within five (5) business days; and

(c) Render assistance if requested by the reporting entity or the Kentucky Department for Public Health.

Section 18. Tuberculosis. (1) A pharmacist shall give notice if two (2) or more of the following medications used for the initial treatment of active tuberculosis are dispensed to an inpatient in a health facility or to an ambulatory patient in a health facility or a pharmacy:

(a) Ethambutol;

(b) Isoniazid;

(c) Pyrazinamide; and

(d) Rifampin or rifabutin.

(2)(a) A report of tuberculosis shall be considered priority and shall be reported to the local health department serving the county in which the patient resides.

(b) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(3) The report shall include:

(a) Information required in Section 5(6)(c)(b) of this administrative regulation; and

(b) Names of the medications dispensed.

Section 19. Asbestosis, Coal Worker's Pneumoconiosis, and Silicosis. (1) A health professional shall report a diagnosis of the following to the Kentucky Department for Public Health within three (3) months of diagnosis:

(a) Asbestosis;

(b) Coal worker's pneumoconiosis; or

(c) Silicosis.

(2) A report required under this section shall include the information required in Section 5(6)(c)(b).

Section 20. Reporting of Communicable Diseases in Animals.

(1) A diagnosis in an animal of a condition known to be communicable to humans, except for rabies, shall require routine notification.

(2) A veterinarian shall report the diagnosis within five (5) business days to the local health department serving the county in which the animal is located.

(3) If a laboratory test indicates infection of an animal with an agent associated with a condition known to be communicable to humans, the director of a medical laboratory shall report the result to the local health department serving the county in which the animal is located within five (5) business days.

(4) The local health department receiving the report shall:

(a) Investigate the report;

(b) Carry out public health protection measures for the control of communicable diseases; and

(c) Forward the report to the Kentucky Department for Public Health within five (5) business days.

(5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 21. Kentucky Public Health Advisory. (1) If the secretary of the Cabinet for Health and Family Services or the commissioner of the Department for Public Health determines that a disease not presently listed in this administrative regulation requires reporting, the secretary or commissioner shall issue a Kentucky public health advisory.

(2) The Kentucky public health advisory shall include:

(a) Date and time the advisory is issued;

(b) A unique number to identify the advisory;

(c) Names for the disease or condition;

(d) A description of the disease or condition;

(e) Recommendations for health professionals, health facilities, and laboratories; and

(f) Notification requirements including:

1. The notification time interval; and

2. Methods for notification.

(3) The duty to report by health professionals, health facilities, and laboratories pursuant to a Kentucky public health advisory shall begin upon receipt of the advisory and shall remain in effect until the advisory is rescinded by order of the secretary or the commissioner.

Section 22. Penalty. If the cabinet has cause to believe that a physician willfully neglects or refuses to notify the cabinet in accordance with this administrative regulation, pursuant to KRS 214.990(1) the cabinet shall make a referral to the appropriate professional licensing board.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "EPID 200, Kentucky Reportable Disease Form", 4/2020;

(b) "EPID 250, Kentucky Reportable MDRO Form", 10/2020;

(c) "EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (aged five (5) years or less)", 9/2020;

(d) "EPID 399, Perinatal Hepatitis B Prevention Form for Infants", 6/2020;

(e) "Adult HIV Confidential Case Report Form", 11/2019; and

(f) "Pediatric HIV Confidential Case Report Form", 11/2019.

(2) This material may be inspected, copied, or obtained,

subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and available online at <https://chfs.ky.gov/agencies/dph/dehp/idb/Pages/default.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 25, 2022

FILED WITH LRC: April 26, 2022 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 27, 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 June 20, 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 June 30, 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: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases, and to permit an accurate assessment of the health status of the commonwealth.

(b) The necessity of this administrative regulation: KRS 211.180(1) requires the cabinet to implement and maintain a statewide program for the detection, prevention, and control of reportable diseases. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation delineates which diseases are reportable including the urgency of the notification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow clinicians including every physician, advanced practice registered nurse, and head of family to notify the local health department of the existence of the diseases specified in the administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: The emergency amendment to this administrative regulation will immediately remove the requirement for healthcare facilities to submit a negative COVID-19 antigen test results, removes the requirement for reporting COVID-19 antibody test results, and allows for the submission of electronic case reporting through the Kentucky Health Information Exchange.

(b) The necessity of the amendment to this administrative

regulation: The emergency amendment to this administrative regulation is necessary to provide immediate relief of the administrative burden for healthcare facilities due to changes for COVID-19 case reporting requirements issued by the Secretary of the Department for Health and Human Services, and to allow healthcare facilities to utilize electronic case reporting in lieu of submitting a faxed or mailed paper form.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.180(1) requires the cabinet to implement and maintain a statewide program for the detection, prevention, and control of reportable diseases. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The emergency amendment to this administrative regulation provides immediate relief of the administrative burden for healthcare providers by eliminating the requirement to report negative COVID-19 antigen test results and will allow healthcare facilities to submit case reports electronically which will provide for a better response time for case investigation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected by this administrative regulation include all health facilities as defined by KRS 216B.015(13), health professionals licensed under KRS Chapters 311 through 314, medical laboratories as defined by KRS 333.020(3), national reference laboratories contracted by Kentucky health professionals, laboratories, or healthcare facilities, pharmacists licensed under KRS Chapter 315, and veterinarians licensed under KRS Chapter 321.

(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: Healthcare facilities will need to be aware of the change in COVID-19 reporting requirements and will need to determine if they begin using the Kentucky Health Information Exchange for case reporting.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs associated with compliance is unknown. Healthcare facilities and physicians already report communicable diseases.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the benefits of the timely and appropriate prevention and control of communicable diseases will be afforded to all citizens of the commonwealth.

(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 are no initial costs.

(b) On a continuing basis: There is no increase in ongoing costs associated with the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The reportable disease programs affected by this administrative regulation are funded through a mix of state general fund dollars, federal dollars, and specialized grants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This emergency administrative regulation does not contain fees.

(9) TIERING: Is tiering applied? Tiering is not applied. While

the list of reportable diseases and conditions is separated by immediate, urgent, priority, routine, or general notification, all healthcare facilities and physicians are required to report any known communicable disease.

FISCAL NOTE

(1) What 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 emergency administrative regulation impacts the Division of Epidemiology and Health Planning, as well as all local health departments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.090(3), 211.180(1), and 214.010.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? There are no increased costs to administer this program in the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will result in cost savings for those health care facilities that elect to utilize the Kentucky Health Information Exchange for submission.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will result in cost savings for those health care facilities that elect to utilize the Kentucky Health Information Exchange for submission.

(c) How much will it cost the regulated entities for the first year? There will be no costs to the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? There will be no costs to the regulated entities.

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

Cost Savings (+/-): This administrative regulation will result in cost savings for those health care facilities that elect to utilize the Kentucky Health Information Exchange for submission.

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This emergency administrative regulation will not have a major economic impact on the regulated entities or state or local governments.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Pub.L. 116-136 Section 18115, also known as CARES Act.

(2) State compliance standards. KRS 194A.050 authorizes the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs.

(3) Minimum or uniform standards contained in the federal mandate. The CARES Act requires "[e]very laboratory that performs or analyzes a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19" to report the results from each such test to the secretary of the Department of Health and Human Services (HHS). The statute authorizes the secretary to prescribe the form and manner, and timing and frequency, of such reporting. Under the amendment to the act, the secretary is requiring that data elements be reported through existing public health data reporting methods, namely through reporting to state, territorial, local, and tribal (STLT) public health departments as described in this guidance. As a guiding principle, data must be sent to STLT health departments using existing reporting channels to ensure rapid public health response by those departments (in accordance with STLT law, policies, and procedures).

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this emergency administrative regulation does not impose 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.

AMENDED IN-PROCESS 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](#).

BOARDS AND COMMISSIONS

Board of Nursing

(Emergency As Amended at ARRS, May 10, 2022)

201 KAR 20:260E. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.

Emergency As Amended at ARRS version effective: May 10, 2022

Prior versions:

Emergency Amendment - 48 Ky.R. 2168

RELATES TO: KRS 314.041(1), 314.111(1), 314.131

STATUTORY AUTHORITY: KRS 13A.190, 39A.180, 314.111(1), (5), 314.131(1), (2), 2020 RS SB 150, 2020 Ky. Acts ch. 73

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(1) and (5) and 314.131(2) require the board to approve schools of nursing and courses preparing persons for licensure and to monitor standards for nurse competency under KRS Chapter 314. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement KRS Chapter 314. This administrative regulation establishes the organization and administration standards for prelicensure registered nurse or practical nurse programs. This Emergency Amendment is promulgated pursuant to Executive Order 2021-913, KRS 39A.180, and Section 1(13) of 2020 RS SB 150, 2020 Ky. Acts ch. 73.

Section 1. Definitions.

(1) "Campus" means a division of a college or university that has its own grounds, buildings, and students, but is administratively joined to the rest of the college or university.

(2) "Clerical assistance" means the provision of administrative, secretarial, or clerical help by qualified individuals that assists the program of nursing.

(3) "Clinical instructor" means a nurse who is employed by a program of nursing solely to provide students with traditional clinical or simulated experiences.

(4) "Nurse faculty" means a nurse who is employed by a program of nursing, either full-time, part-time, or adjunct, to provide didactic instruction, and may also provide clinical instruction or simulated experiences.

(5) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a student.

(6) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse.

(7) "Nursing track" means a path within a program of nursing that leads to licensure as a nurse.

Section 2. Organization or Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligible for approval by the board, a program shall have:

(1) A governing institution.

(a) The governing institution that establishes and conducts the program of nursing shall hold accreditation as a postsecondary institution, college, or university by an accrediting body recognized by the U.S. Department of Education.

(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing. The program of nursing shall have comparable status with the other programs in the governing institution and the relationship shall be clearly delineated.

(c) The governing institution shall:

1. Designate a program administrator for the prelicensure program of nursing who is qualified pursuant to 201 KAR 20:310 and is responsible for fulfilling the duties specified in subsection (3) of this section on a twelve (12) month basis;

2. Assure that at least fifty (50) percent of the program administrator's time shall be dedicated to complete the duties specified in this administrative regulation at each program of nursing. A governing institution that is unable to comply with this standard may request an exemption from the board in writing.

a. The request shall state the reasons for noncompliance and the efforts the institution has taken and will take to comply with the standard.

b. If the exemption is granted, it shall be for twelve (12) months from the date of board approval. During this time, the governing institution shall not open a new program of nursing ~~and shall not increase enrollment at an existing program of nursing~~;

3. Provide evidence that the fiscal, human, physical, clinical, and technical learning resources shall be adequate to support program mission, processes, security, and outcomes;

4. Provide student support programs, services, and activities consistent with the mission of the governing institution that promote student learning and enhance the development of the student;

5. Make financial resources available to the program of nursing consistent with equivalent programs at the governing institution;

6. Employ nurse faculty pursuant to 201 KAR 20:310 in sufficient number and expertise to accomplish program outcomes and quality improvement;

7. Provide written policies for faculty related to qualifications for the position, rights and responsibilities of the position, criteria for evaluation of performance, workload, and retention;

8. Involve the nurse faculty in determining academic policies and practices for the program of nursing; and

9. Provide for the security, confidentiality, and integrity of faculty employment and student records.

(d) The governing institution shall provide an organizational chart that describes the organization of the program of nursing and its relationship to the governing institution;

(2) Administrative policies.

(a) There shall be written administrative policies for the program of nursing that shall be:

1. In accord with those of the governing institution; and

2. Available to the board for review.

(b) The board shall be notified in writing of a change, vacancy, or pending vacancy, in the position of the program administrator within thirty (30) days of the program of nursing's awareness of the change, vacancy, or pending vacancy.

1. The head of the governing institution shall submit to the board in writing the name of the registered nurse who has been designated to assume the administrative duties for the program, the date the person will assume the duties of program administrator, and a copy of his or her curriculum vitae.

2. a. If there is to be a lapse between the date of the change or vacancy and the date the newly-appointed program administrator assumes duties, the head of the governing institution shall submit a plan of transition to ensure the continuity of the program.

b. Progress reports shall be submitted if requested by the board.

3. a. The length of the appointment of an interim program administrator shall not exceed six (6) months.

b. Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position.

(c) A written plan for the orientation of the nurse faculty to the governing institution and to the program shall be implemented.

(d) There shall be a written contract between the governing institution and each agency or institution that provides a learning experience for a student. A contract shall not be required for an observational experience.

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the nurse faculty control of the student learning experiences subject to policies of the contractual parties.

4. The contract shall be current and may include an annual automatic renewal clause.

5. The contract shall contain a termination clause by either party;

(3) A program or an interim program administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships with the administration of the institution, other divisions or departments within the institution, related facilities, and the community;

(b) Participation in the preparation and management of the program of nursing budget;

(c) Screening and recommendation of candidates for nurse faculty appointment, retention, and promotion;

(d) Submission of the qualifications of all nurse faculty and clinical instructors as set forth in 201 KAR 20:310, Section 4;

(e) To provide leadership within the nurse faculty for the development, implementation, and evaluation of the program of nursing and program outcomes;

(f) To facilitate the implementation of written program policies for the following:

1. Student admission;

2. Student readmission and advance standing;

3. Student progression, which shall include:

a. The level of achievement a student shall maintain in order to remain in the program or to progress from one (1) level to another; and

b. Requirements for satisfactory completion of each course in the nursing curriculum.

4. Requirements for completion of the program;

5. Delineation of responsibility for student safety in health related incidents both on campus and at any clinical activity required by the program of nursing;

6. Availability of student guidance and counseling services;

7. The process for the filing of grievances and appeals by students;

8. Periodic evaluation by the nurse faculty of each nursing student's progress in each course and in the program;

9. Student conduct that incorporates the standards of safe nursing care; and

10. Publication and access to current academic calendars and class schedules;

(g) To facilitate the continuing academic and professional development for the nurse faculty;

(h) 1. To initiate and coordinate the development of contracts with clinical facilities, the number and variety of which shall be adequate to meet curricular outcomes;

2. To develop written criteria for the selection and evaluation of clinical facilities and ensure that the criteria shall be utilized by the program of nursing; and

3. To assure that clinical facilities show evidence of approval by the appropriate accreditation, evaluation, or licensure bodies, if applicable;

(i) The establishment of student-nurse faculty ratio in the clinical practice experience.

1. The maximum ratio of nurse faculty to students in the clinical area of patients-clients shall be defensible in light of safety, learning objectives, student level, and patient acuity.

2. The student-nurse faculty ratio shall not exceed ten (10) to one (1) in the clinical practice experience, including observational or other supervised learning experiences.

3. This ratio shall not apply to on campus skill lab experiences;

(j) The submission of the Certified List of Kentucky Program of Nursing Graduates, as incorporated by reference in 201 KAR 20:070, upon student completion of all requirements for a degree, diploma, or certificate, regardless of the state in which the graduate intends to seek licensure;

(k) The development and maintenance of an environment conducive to the teaching and learning process;

(l) To facilitate the development of long-range goals and objectives for the nursing program;

(m) To ensure that equipment, furnishings, and supplies be current and replaced in a timely manner;

(n) To ensure that the nurse faculty has sufficient time to accomplish those activities related to the teaching-learning process and program outcomes;

(o) To coordinate an orientation to the roles and responsibilities of full-time, part-time, adjunct nurse faculty, and clinical instructors to the program of nursing and, as appropriate, to clinical facilities so that the mission, goals, and expected outcomes of the program shall be achieved;

(p) To facilitate regular communication with the full and part time nurse faculty and clinical instructors in the planning, implementation, and evaluation of the program of nursing;

(q) To ensure that recruitment materials provide accurate and complete information to prospective students about the program including the:

1. Admission criteria;

2. Program description, including course sequence, prerequisites, and corequisites;

3. Length of the program;

4. Current cost of the program, including tuition and all associated fees and expenses; and

5. Transferability of credits to other public and private institutions in Kentucky;

(r) To conduct or participate in the written evaluation of each nurse faculty member, clinical instructor, and program of nursing support staff according to published criteria, regardless of contractual or tenured status;

(s) To ensure the adherence to the written criteria for the selection and evaluation of clinical facilities utilized by the program of nursing;

(t) To maintain current knowledge of requirements pertaining to the program of nursing and licensure as established in 201 KAR Chapter 20;

(u) To attend the next available board orientation for program administrators but not later than within six (6) months of appointment;

(v) To develop a structure to allow nurse faculty to assist in the governance of the program;

(w) To ensure that the curriculum is developed and implemented pursuant to 201 KAR 20:320; and

(x) To ensure that the program of nursing posts a link provided by the board to the information published by the board pursuant to 201 KAR 20:360, Section 5(4) on its Web site and refers all individuals seeking information about the program to this link.

(4) A system of official records and reports essential to the operation of the program of nursing maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system shall include records of:

(a) Currently enrolled students to include admission materials, courses taken, grades received, scores for standardized tests, and clinical performance records;

(b) Minutes of faculty and committee meetings, which shall be maintained a minimum of five (5) years, irrespective of institutional policy;

(c) Faculty records including:

1. Validation of current licensure or privilege to practice as a Registered Nurse in Kentucky;

2. Evidence of fulfilling the faculty orientation requirements established in 201 KAR 20:310, Section 3(5); and

3. Performance evaluation for faculty employed more than one (1) year;

(d) Systematic plan of evaluation;

- (e) Graduates of the program of nursing; and
- (f) Administrative records and reports from accrediting agencies; and
- (5) Official publications of the governing institution including:
 - (a) A description of the governing institution and program of nursing;
 - (b) Policies on admission, progression, dismissal, graduation, and student grievance procedures; and
 - (c) A description of student services;
 - (6) Clerical assistance and support staff.
 - (a) There shall be clerical assistance and support staff sufficient to meet the needs of the nursing program for the administrator, faculty, and students.
 - (b) Each campus shall have at least one (1) dedicated clerical staff.
 - (c) If the program of nursing does not have at least one (1) dedicated clerical staff, the program administrator shall provide written justification to the board. The board shall evaluate the justification to determine whether the program may operate effectively without dedicated staff sufficient to meet the needs of the nursing program. If the board rejects the justification, the program of nursing shall comply with the board's determination on clerical staffing.
 - (7) Nurse faculty, full-time, and part-time, with the authority and responsibility to:
 - (a) Plan, implement, evaluate, and update the program;
 - (b) Assist in the design, implementation, evaluation, and updating of the curriculum using a written plan;
 - (c) Participate in the development, implementation, evaluation, and updating of policies for student admission, progression, and graduation in keeping with the policies of the governing institution;
 - (d) Participate in academic advisement and guidance of students;
 - (e) Provide theoretical instruction and clinical learning experiences;
 - (f) Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;
 - (g) Develop and implement student evaluation methods and tools for each course that measure the progression of the student's cognitive, affective, and psychomotor achievement of course and clinical outcomes based on published rubrics and sound rationale;
 - (h) Participate in academic and professional level activities that maintain the faculty member's competency and professional expertise in the area of teaching responsibility;
 - (i) Communicate clinical outcomes to the student, clinical instructor, preceptor, and staff at the clinical site;
 - (j) Assume responsibility for utilizing the criteria in the selection of clinical sites and in the evaluation of clinical experiences on a regular basis;
 - (k) Evaluate the student's experience, achievement, and progress in relation to course and clinical outcomes, with input from the clinical instructor and preceptor, if applicable; and
 - (l) Delegate to a nurse employed by a clinical agency the supervision of a student performing a procedure; and
 - (8) Clinical instructors with the authority and responsibility to:
 - (a) Design, at the direction of the nurse faculty member, the student's clinical experience to achieve the stated outcomes of the nursing course in which the student is enrolled;
 - (b) Clarify with the nurse faculty member:
 - 1. The role of the preceptor, if applicable;
 - 2. The course responsibilities;
 - 3. The course or clinical outcomes;
 - 4. A course evaluation tool; and
 - 5. Situations in which collaboration and consultation shall be needed;
 - (c) Participate in the evaluation of the student's performance by providing information to the nurse faculty member and the student regarding the student's achievement of established outcomes; and
 - (d) Delegate to a nurse employed by a clinical agency the supervision of a student performing a procedure.

Section 3. Notification of Change in Enrollment.

- (1) All programs of nursing shall have on record with the board

the maximum number of new students that the program is able to enroll in one (1) academic year. This number shall be referred to as the program's enrollment baseline.

(2)(a) A program of nursing that desires to increase its enrollment beyond its enrollment baseline shall submit a request to the board. ~~[The request shall be sent in writing at least two (2) months prior to the date for which the requested increase is being sought. Exceptions to this time frame shall only be made for exigent circumstances.]~~ ***The request is only necessary if the increase is greater than the following:***

- ~~1. If the enrollment baseline is fifty (50) or less, an increase of ten (10) students;~~
- ~~2. If the enrollment baseline is fifty-one (51)-100, an increase of twenty (20) students; or~~
- ~~3. If the enrollment baseline is greater than 100, an increase of twenty-five (25) students.]~~

(b) ~~[The request shall demonstrate that the program has sufficient resources to fulfill the standards established by this administrative regulation for the anticipated increase in enrollment. These sufficient resources shall include adequate:~~

- ~~1. Number of qualified faculty;~~
- ~~2. Classroom space;~~
- ~~3. Clinical sites or simulation resources, pursuant to 201 KAR 20:320 Section 3;~~
- ~~4. Clerical support; and~~
- ~~5. Financial support.~~

~~(c) The program shall investigate the projected impact of the increase on the operation of programs of nursing within a fifty (50) mile radius and shall submit a report to the board.~~

~~(d) The program of nursing shall submit evidence demonstrating that it is maintaining the standards required pursuant to KRS 414.111, and established by 201 KAR 20:260 through 201 KAR 20:360[has met the benchmarks set out in 201 KAR 20:360, Section 5(2)(f)].~~

(3)(a) The request shall be reviewed by board staff. Board staff shall ~~[may]~~ approve the request within thirty (30) days of the receipt of the request, if ~~[it is determined that]~~ the criteria listed in subsection (2)(b) of this section have been met.

(b) If ~~[board staff determines that]~~ the criteria listed in subsection (2)(b) of this section have not objectively been met, the request shall be held in abeyance until the program of nursing demonstrates that the criteria listed in subsection (2)(b) of this section has been met, and the timeframe of thirty (30) days in subsection (3)(a) of this section shall be tolled until the program of nursing demonstrates that the criteria listed in subsection (2)(b) of this section has been met~~[referred to the board for further consideration and a decision].~~

Section 4. Multiple Campuses. (1)(a) A governing institution may have programs of nursing located on different campuses.

~~[(b) Each campus shall be considered a separate program of nursing.]~~

(2)(a) The governing institution shall designate a main campus headed by a program administrator.

(b) The program administrator shall have final responsibility and authority for the non-main campuses, but shall designate an assistant program administrator to assist in the governance of each non-main location. The assistant program administrator shall meet the qualification for a nurse faculty as set out in 201 KAR 20:310. The program administrator may designate the amount of release time for the assistant program administrator for administrative duties, but it shall not be less than twenty-five (25) percent.

(3) For purposes of calculating benchmarks set out in 201 KAR 20:360, Section 5(2)(f), each campus shall individually report its data annually to the board. The board shall evaluate the benchmarks for each campus individually.

Section 5. Suspension of Enrollment. (1) A governing institution that decides to suspend enrollment in the program of nursing shall notify the board in writing within thirty (30) days following the decision. No longer enrolling in one (1) of several nursing tracks within a program of nursing shall not constitute suspension of enrollment for purposes of this administrative

regulation.

(2) The notification shall identify the reasons leading to the decision and how long it is anticipated that the suspension will be in effect.

(3) The governing institution shall report to the board annually on the status of the suspension.

(4)(a) If the decision to reinstate enrollment is made within three (3) years of the decision to suspend enrollment, the governing institution shall notify the board in writing of the decision within thirty (30) days.

(b) The notification shall state the date classes will begin. It shall also list the faculty and clinical sites that will be utilized.

(5) If the decision to reinstate enrollment is made three (3) years or more from the decision to suspend enrollment, the governing institution shall comply with the procedures outlined in 201 KAR 20:280.

Section 6. Change in Accreditation.

(1) A governing institution that seeks to change the U.S. Department of Education recognized accrediting body from which it receives accreditation shall notify the board when it has filed an application for accreditation.

(2) A governing institution with an application in process before the accrediting body shall be considered in compliance with Section 2(1)(a) of this administrative regulation.

(3)(a) A governing institution whose application has been denied by its accrediting body shall not be considered to be in compliance with Section 2(1)(a) of this administrative regulation.

(b) The board shall begin the process established in 201 KAR 20:360, Section 7 for withdrawal of approval.

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

BOARDS AND COMMISSIONS
Board of Nursing
(Emergency As Amended at ARRS, May 10, 2022)

201 KAR 20:480E. Licensure of graduates of foreign nursing schools.

Emergency as amended at ARRS version effective - May 10, 2022

Prior version:

Emergency amendment version - 48 Ky.R. 2367

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 ~~to and~~ 314.991. KRS 314.041 and 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. This Emergency Amendment is promulgated pursuant to KRS 39A.180~~39A.190~~, and Section 1(13)(d) of 2020 RS SB 150, 2020 Ky. Acts ch. 73.

Section 1. Applicants who are Graduates of Foreign Nursing Schools.[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 by endorsement as a registered nurse shall obtain and submit to the board documentation as provided in KRS 314.041(10)(b)[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. The report shall state whether the applicant's program of nursing is comparable to an approved program in the state].

(b) An applicant for licensure by endorsement as a licensed practical nurse shall obtain and submit to the board documentation as provided in KRS 314.051(11)(b)[also complete an English Language Proficiency examination pursuant to Section 2 of this administrative regulation].[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.]

(5) An applicant shall also complete an English Language Proficiency examination pursuant to Section 2 of this administrative regulation.

(6) 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 an 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 examination ~~shall be~~ examinations are recognized by the National Council of the State Boards of Nursing (NCSBN), and the applicant shall obtain a ~~with the~~ minimum passing standard recommended by the NCSBN:

(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 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.]

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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(Emergency Amended After Comments)

900 KAR 14:010E. Essential personal care visitor programs; visitation guidelines.

Emergency Amended After Comments version effective: May 11, 2022

Prior versions:

New Emergency Administrative Regulation - 48 Ky.R. 2548
As Amended at ARRS - 48 Ky.R. 2556

RELATES TO: KRS 194A.700(4), 216.510(1)

STATUTORY AUTHORITY: 2022 Ky. Acts ch. 10, sec. 1

NECESSITY, FUNCTION, AND CONFORMITY: 2022 Ky. Acts ch. 10, sec. 1 requires the cabinet to promulgate administrative regulations, subject to applicable federal requirements, to establish guidelines for any individual designated as an essential personal care visitor to have in-person visitation with a resident of an assisted-living community, long-term care facility, or state-owned or operated mental or psychiatric hospital during a period when general visitation is limited or prohibited.

Section 1. Definitions. (1) "Essential personal care visitor" means a family member, legal guardian, outside caregiver, friend, or volunteer who:

- (a) Is eighteen (18) years of age or older;
- (b) May have provided regular care and support to a resident prior to any restrictions on visitation;
- (c) Is designated as being important to the mental, physical, or social well-being of the resident; and
- (d) Meets an essential need of the resident, including companionship, assisting with personal care, or positively influencing the behavior of the resident.

(2) "Facility" means:

- (a) An assisted-living community as defined by KRS 194A.700(4);
- (b) A long-term care facility as defined by KRS 216.510(1); or
- (c) A mental hospital as defined by 2022 Ky. Acts ch. 10, sec. 1.

~~[(3) "Facility-onset" means a COVID-19 or other communicable disease case that originates in a facility.~~

~~[(4) "Outbreak" means one (1) new COVID-19 or other communicable disease case among facility staff or one (1) new facility-onset case among residents.]~~

~~[(5)]~~ (5) "Personal care" means assisting a resident with essential everyday activities, which may include grooming, dressing, and eating.

~~[(6)]~~ (6) "Resident" means an individual who:

- (a) Resides in an assisted-living community or long-term care facility; or
- (b) Is a patient of a mental hospital as defined by 2022 Ky. Acts ch. 10, sec. 1.

Section 2. Essential personal care visitation. (1) A facility shall:

- (a) Allow essential personal care visitation as an exception from any prohibition against general visitation;
 - (b) Establish policies and procedures for the designation of at least one (1) essential personal care visitor, including a process for changing the designated essential personal care visitor; and
 - (c) In accordance with 2022 Ky. Acts ch. 10, sec. 1, not be required to permit an in-person visitor at all times.
- (2) Designation of an essential personal care visitor shall be made in consultation with, and upon agreement by the:
- (a) Resident; and
 - (b) Resident's representative, if applicable.
- (3) A facility may require a written agreement with an essential personal care visitor.
- (4) A facility may limit the total number of visitors permitted in the facility at any one (1) time.
- (5) A facility may limit visitation by an essential personal care visitor to the resident or residents he or she is approved to visit.

(6) An essential personal care visitor who enters a facility during a period when general visitation is limited or prohibited shall:

- (a) Assume the risk of contracting a communicable disease;
 - (b) Limit visitation to the resident's room or a facility-designated room within the building;
 - (c) Limit his or her movement within the facility;
 - (d) Follow the facility's safety protocols; and
 - (e) Inform the facility if he or she develops symptoms of a communicable disease within fourteen (14) days of the visit.
- (7) If the resident has a roommate, an essential personal care visitor shall:
- (a) Not enter the resident's room if the roommate is there unless the roommate agrees in advance; and
 - (b) Be prohibited from staying in the room for more than fifteen (15) minutes unless otherwise approved by the roommate or roommate's representative.
- (8) An essential personal care visitor shall follow the same safety protocols required for facility staff, which may include one (1) or more of the following:

- (a) Testing for a communicable disease, which may be the responsibility of the essential personal care visitor. If testing is provided by the facility, essential personal care visitors shall be tested on the same schedule as staff;
 - (b) Health screens, including screening for signs and symptoms of a communicable disease and denial of entry of any individual with signs and symptoms;
 - (c) Using appropriate personal protective equipment (PPE);
 - (d) Washing or sanitizing hands regularly;
 - (e) Maintaining a distance of six (6) feet from staff and other residents at all times. Social distancing from the resident receiving an essential personal care visit may be relaxed for a short period of time under certain circumstances, e.g., providing assistance with a personal care activity; and
 - (f) Adhering to any other requirement the facility deems appropriate in accordance with guidance from the Centers for Disease Control and Prevention (CDC).
- (9) During a period when general visitation is limited or prohibited, a facility shall:
- (a) Be responsible for verifying and tracking the testing status of each essential personal care visitor if the facility requires testing as a safety protocol;
 - (b) Schedule essential personal care visits in advance or in accordance with a written agreement;
 - (c) Consider the number of other essential visitors who will be in the building at the same time when developing a visitation schedule;
 - (d) Establish limitations on the visitation frequency and length of the visits to keep staff and residents safe;
 - (e) Sanitize the area's high-frequency touched surfaces after the visit; and
 - (f) Continue to provide all required services and activities to a resident while an essential personal care visitor is with the resident.

Section 3. Training. (1) If required by the facility's written policies and procedures, each essential personal care visitor shall complete facility-designated training that includes basic information on infection prevention and control.

(2) A facility may post signage throughout the facility that demonstrate key instructions to reinforce safe practices.

ADAM MATHER, Inspector General
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 10, 2022

FILED WITH LRC: May 11, 2022 at 1:45 p.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: Kara Daniel; Stephanie Brammer-Barnes; or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new emergency administrative regulation establishes guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals during a period when general visitation is limited or prohibited.

(b) The necessity of this administrative regulation: This new emergency administrative regulation is necessary to comply with 2022 Ky. Acts ch. 10, sec. 1 (Senate Bill 100).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new emergency administrative regulation conforms to the content of 2022 Ky. Acts ch. 10, sec. 1 by establishing guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new emergency administrative regulation assists in the effective administration of the statutes by establishing guidelines for implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals during a period when general visitation is limited or prohibited.

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

(a) How the amendment will change this existing administrative regulation: In response to public comments, this emergency amended after comments administrative regulation removes the definition of "facility-onset" and "outbreak" from Section 1.

(b) The necessity of the amendment to this administrative regulation: This emergency amended after comments administrative regulation is necessary to make changes in response to public comments.

(c) How the amendment conforms to the content of the authorizing statutes: This emergency amended after comments administrative regulation conforms to the content of 2022 Ky. Acts ch. 10, sec. 1 by establishing guidelines for the implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

(d) How the amendment will assist in the effective administration of the statutes: This emergency amended after comments administrative regulation assists in the effective administration of the statutes by establishing guidelines for implementation of essential personal care visitor programs in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals during a period when general visitation is limited or prohibited.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new emergency administrative regulation affects assisted-living communities, state-owned or operated psychiatric hospitals, and long-term care facilities. There are 133 assisted-living communities and three (3) state-owned or operated psychiatric hospitals. The number of long-term care facilities by licensure category is as follows: one (1) Alzheimer's nursing home; nine (9) intermediate care facilities; sixteen (16) intermediate care facilities for individuals with intellectual disabilities; twelve (12) licensed nursing facilities; twenty-seven (27) licensed nursing homes; 169 personal care homes; and 281 certified nursing facilities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with the requirements of 2022 Ky. Acts ch. 10, sec. 1 and this administrative regulation,

individuals designated as essential personal care visitors shall be exempt from any general prohibitions on visiting a resident of an assisted-living community, long-term care facility, or state-owned or operated mental or psychiatric hospital.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be significant costs to facilities to implement essential personal care visitor programs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Essential personal care visitor programs are intended to help enhance the well-being and quality of life of Kentuckians in assisted-living communities, long-term care facilities, and state-owned or operated psychiatric hospitals.

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

(a) Initially: There are no additional costs to the Cabinet for Health and Family Services for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the Cabinet for Health and Family Services for implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated by it.

FISCAL NOTE

(1) What 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 emergency administrative regulation impacts assisted-living communities, long-term care facilities, state-owned or operated psychiatric hospitals, and the Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2022 Ky. Acts ch. 10, sec. 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 emergency administrative regulation will not generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? This emergency administrative regulation imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this emergency administrative regulation on a continuing basis.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not impose additional costs on regulated entities during the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not impose additional costs on regulated entities during subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will not have a major economic impact on assisted-living communities, long-term care facilities, or state-owned or operated psychiatric hospitals.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Executive Branch Ethics Commission
(As Amended at ARRS, May 10, 2022)

9 KAR 1:070. Standards of ethical conduct for transition team members and disclosure form.

RELATES TO: KRS ~~6.801 – 6.829~~, 11A.010, 11A.047, 11A.060, 11A.110, 11A.201 – 11A.246

STATUTORY AUTHORITY: KRS 11A.047, 11A.110(3), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.110(3) and (4) require the Executive Branch Ethics Commission to promulgate administrative regulations to implement KRS Chapter 11A and to establish~~prescribe~~ forms for statements required by this chapter. KRS 11A.047(3), (4), and (7) require the commission to establish standards of ethical conduct for transition team members, ~~prescribe a form for the newly elected official to designate transition team leaders,~~ prescribe a form for the transition team leaders to list the members of the transition team, and prescribe a disclosure form for the transition team members to submit to the commission. This administrative regulation establishes the standards of ethical conduct for transition team members and related forms, ~~prescribes the three forms, and incorporates them by reference.~~

Section 1. Definitions. (1) "Agency" is defined by KRS 11A.047(1)(a).

(2) "Commission" means the Executive Branch Ethics Commission as established by KRS 11A.060.

(3) "Engage" is defined by KRS 6.611(13) and 11A.201(4).

(4) "Executive agency decision" is defined by KRS 11A.201(8).

(5) "Executive agency lobbying activity" is defined by KRS 11A.201(10).

(6) "Financial Impact" means to have an effect on the financial position of a person or business whether or not the impact is positive or negative.

(7) "~~Gift~~Gifts" is defined by KRS 11A.010(5).

(8) "Legislative matter" is defined by KRS 6.611(25).

(9) "Lobby" is defined by KRS 6.611(27).

(10) "Newly elected official" means a person elected to an office listed in KRS 11A.010(9)(a) to (g) who has not yet been sworn into office.

(11) "~~Nonpublic~~Non-public" information" is defined by KRS 11A.047(1)(b).

(12) "Regular election" is defined by KRS 446.010(37).

(13) "Transition team" is defined by KRS 11A.047(1)(c).

(14) "Transition team lead" means a person designated by the newly elected official to manage the transition team on behalf of the newly elected official.

(15) "Transition team member" is defined by KRS 11A.047(1)(d).

(16) "Transition team end date" is the date of inauguration for the newly elected gubernatorial official or the swearing-in date for all other newly elected officials.

Section 2. ~~Transition Team Member List~~Newly Elected Official Disclosure of Transition Team Lead. (1) The commission shall notify the newly elected official of all disclosure requirements within five (5) business days of the date of the regular election.

(2) If the newly elected official decides to create a transition team as established~~provided~~ in KRS 11A.047(2), the newly elected official shall designate a transition team lead~~file with the commission a Transition Team Lead Designation form EBEC-301~~, as required by KRS 11A.047(4)~~, within ten (10) business days of the date of the regular election.~~

(3) ~~The newly elected official shall ensure that the Transition Team Lead Designation form EBEC-301 that is filed~~

~~with the commission is current and notifies the commission by filing an amended Transition Team Lead Designation form EBEC-301 within five (5) business days of any additions to or departures from the transition team leadership until the transition team end date.~~

~~Section 3. Transition Team Member Lists. (1) The commission shall notify each transition team lead of all disclosure requirements within fourteen (14) business day of the date of the regular election.~~

~~(2)]~~ The transition team lead shall file with the commission a Transition Team Members List form EBEC-302, as required by KRS 11A.047(4), within twenty (20) business days of the date of the regular election.

~~(4)](3)]~~ The transition team lead shall:

~~(a)~~ Ensure that the Transition Team Members List form EBEC-302 that is filed with the commission is current; and

~~(b)](shall)]~~ Notify the commission by filing an amended Transition Team Members List form EBEC-302 within five (5) days of any additions to or departures from the transition team until the transition team end date.

~~Section 3.~~Section 4.] Transition Team Member Disclosure.

(1) Prior to beginning service on a transition team, every transition team member shall file with the commission, as required by KRS 11A.047(7), a Transition Team Member Disclosure Statement form EBEC-303.

(2) The transition team member shall update the Transition Team Member Disclosure Statement form EBEC-303 filed with the commission within five (5) business days of any employment, business interest, or transition team assignment changes that would have a material effect on their originally filed Disclosure Statement form EBEC-303 until the transition team end date.

(3) The transition team member shall update the Transition Team Member Disclosure Statement form EBEC-303 filed with the commission within five (5) business days of the acceptance of any gift~~gifts~~ over twenty-five (25) dollars~~\$25~~ or acceptance of future employment as required by KRS 11A.047(7)(f) until the transition team end date.

(4) The transition team member shall update the Transition Team Member Disclosure Statement form EBEC-303 filed with the commission within five (5) business days of any new recusals required pursuant to KRS 11A.047(7)(h) until the transition team end date.

(5) The commission shall notify any transition team member who fails to file the Transition Team Member Disclosure Statement form EBEC-303 within ten (10) business days after beginning their initial service.

(6) If within ten (10) business days of receiving notice from the commission, the transition team member has failed to file the required Transition Team Member Disclosure Statement form EBEC-303, the commission shall~~will~~ send notice to the newly elected official and transition team leads that the transition team member should be removed from the transition team and discontinue all activities on behalf of the transition team until the form is filed.

~~Section 4.~~Section 5.] Standards of Ethical Conduct for Transition Teams. (1) All transition team members shall:

(a) Comply with KRS 11A.047(5) and (6);

(b) Document in writing all state agencies where they may be granted access to nonpublic information obtained for purposes of the transition process;

(c) Recuse from any assignment with which they have a financial interest as established~~defined~~ by KRS 11A.047(6)(a) through (g); and

(d) Ensure that their disclosures ~~which are~~ on file with the

commission are accurate and current until the transition team end date.

(2) ~~A recusal shall~~**[Recusals must]** be documented on the Transition Team ~~Member~~ Disclosure Statement form EBEC-303 filed with the commission prior to beginning service on the transition team.

(3) ~~A recusal after a member begins~~**[Recusals that arise after beginning]** service on the transition team ~~shall~~**[must]** be documented by filing an updated Transition Team ~~Member~~ Disclosure Statement form EBEC-303 with the commission until the transition team end date.

~~Section 5.~~**[Section 6.]** Current and Former Registered Lobbyists. All transition team members who are registered lobbyists under KRS 6.801 ~~through~~**[to]** 6.829 and KRS 11A.201 ~~through~~**[to]** 11A.246 or are former lobbyists who were registered under KRS 6.801 ~~through~~**[to]** 6.829 and KRS 11A.201 ~~through~~**[to]** 11A.246 during the twelve (12) month period prior to becoming a transition team member shall:

(1) Disclose his or her current or previous registration as a lobbyist during the twelve (12) months prior to becoming a transition team member on the Transition Team Member Disclosure Statement form EBEC-303 filed with the commission;

(2) Recuse from involvement in a decision-making capacity on the transition team from any executive ~~agency~~**[branch]** decision or legislative matter that would have a financial impact on his or her executive agency lobbying activities or legislative lobbying engaged in during the previous twelve (12) months;

(3) Not use or reveal any nonpublic information he or she receives in his or her tenure as a transition team member in any current or future executive agency lobbying activity or legislative lobbying; and

(4) Not receive nonpublic information regarding matters that financially impact his or her clients for whom he or she was engaged to lobby.

~~Section 6.~~**[Section 7.]** Submission. The forms required by this administrative regulation, which are filed with the commission, shall be submitted as follows:

(1) By hard copy via hand-delivery or U.S. Mail to the commission's address: ~~Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601;~~

(2) Electronically by facsimile to (502) 696-5091; or

(3) Electronically by electronic mail to ethicsfiler@ky.gov.

~~Section 7.~~**[Section 8.]** Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ~~["Transition Team Lead Designation" EBEC-301 (Rev. 01/2022);~~

~~(b)] "Transition Team Members List" EBEC-302 (Rev. 01/2022); and~~

~~(b)(c)] "Transition Team Member Disclosure Statement" EBEC-303 (Rev. 01/2022).~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material incorporated by reference is also available on the commission's website at <https://ethics.ky.gov/Pages/default.aspx>.

CONTACT PERSON: Steven T. Pulliam, General Counsel, Executive Branch Ethics Commission, 1025 Capital Center Drive, Suite 104, Frankfort, Kentucky 40601, phone (502) 564-7954, fax (502) 695-5939, email EthicsFiler@ky.gov.

BOARDS AND COMMISSIONS

Board of Pharmacy

(As Amended at ARRS, May 10, 2022)

201 KAR 2:440. Legend drug repository.

RELATES TO: KRS 217.816, 315.191, 315.450, 315.452, 315.454, 315.456, 315.458, 315.460, 21 U.S.C. 340B, 21 U.S.C.

360-1 to 360-4, 21 U.S.C. 381 to 384g

STATUTORY AUTHORITY: KRS 315.191, 315.452, 315.458
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy**[board]** to promulgate administrative regulations pursuant to KRS Chapter 13A necessary to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers. KRS 315.452 and 315.458 ~~require~~**[requires]** the board to promulgate regulations to establish the legend drug repository program. This administrative regulation establishes the legend drug repository program and the requirements to participate in the program.

Section 1. Definitions. (1) "Authorized recipient" means a recipient that has received authorization from the board to participate in the legend drug repository program pursuant to Section 2 and whose authorization has not been revoked by the board pursuant to Section 3.

(2) "Board" means the Kentucky Board of Pharmacy.

(3) "Controlled substance" ~~is~~**[has the same meaning as]** defined ~~by~~**[in]** KRS 218A.010.

(4) "Dispense" ~~is~~**[has the same meaning as]** defined ~~by~~**[in]** KRS 315.010.

(5) "Distribute" ~~is~~**[has the same meaning as]** defined ~~by~~**[in]** KRS 315.400.

(6) "Donor" ~~means:~~

~~(a) [shall mean] Any entity legally authorized and permitted to possess drugs, such as [including but not limited to] a wholesaler or distributor, third party logistic provider, pharmacy, clinic, surgical or health center, detention and rehabilitation center, laboratory, medical or pharmacy school, prescriber or other health care provider, or health facility; or~~

~~(b) [- Donor shall also mean] Government agencies and entities that are federally authorized to possess drugs, such as:~~

~~1. [including but not limited to] Drug manufacturers;~~

~~2. [.] Repackagers;~~

~~3. [.] Relabelers;~~

~~4. [.] Outsourcing facilities;~~

~~5. [.] Veteran Affairs hospitals; [.]~~

~~6. Prisons; and~~

~~7. FDA authorized importers, such as those under 21 U.S.C. 384g [Federal FD&C Section 801, 804,] or similar provisions [and prisons].~~

(7) "Drug" ~~is~~**[has the same meaning as]** defined ~~by~~**[in]** KRS 315.010.

(8) "Eligible patient" means:

~~(a) An individual who is indigent, uninsured, or underinsured; and~~

~~(b) [.] Other patients, [shall be considered eligible] if a need for the donated drugs is not identified among indigent, uninsured, and underinsured individuals.~~

(9) "Health care provider" ~~is defined by~~**[has the same meaning as in]** KRS 304.17A-005(23).

(10) "Health[Heath] facility" ~~is defined by~~**[has the same meaning as in]** KRS 216B.015(13).

(11) "Original packaging" ~~means~~**[shall mean]** the packaging in which the drug was donated by the donor.

(12) "Pharmacist" ~~is~~**[has the same meaning as]** defined ~~by~~**[in]** KRS 315.010(17).

(13) "Recipient" means a pharmacy as defined by KRS 315.010(19).

(14) "Relabeler" ~~means any person who owns or operates an establishment that changes the content of the labeling from that supplied from the original manufacturer for distribution under the establishment's own name, except for establishments that do not change the original labeling, but merely add their own name~~**[has the same meaning as defined in 201 KAR 2:320].**

(15) "Repackager" ~~is~~**[has the same meaning as]** defined ~~by~~**[in]** KRS 315.400(16).

(16) "Returns processor":

~~(a) Is defined by~~**[shall have the same meaning as in]** 21 U.S.C. Section 360eee(18); and

~~(b) Includes~~**[shall include but is not limited to]** a reverse

distributor or similar entity.

(17) “Unopened tamper-evident packaging” is defined by the[shall have the same meaning as] United States Pharmacopeia (USP) General Chapter 659, Packaging and Storage Requirements, and includes[including but not limited to] unopened unit-dose, multiple dose, immediate, secondary, and tertiary packaging.

Section 2. Participation in the Legend Repository Program.

(1) Donors may donate drugs to an authorized recipient. An authorized recipient may receive donated drugs from donors. Prior to the first donation from a new donor, an authorized recipient shall[must] verify and record the following:

(a) That the donor meets the definition provided in Section 1;
 (b) The donor’s name, address, phone number, and permit or license number;

(c) That the donor will only make donations of drugs in accordance with Section 3; and

(d) If applicable, that the donor will:

1. Remove or redact any patient names and prescription numbers on donated drugs; or

2. Otherwise maintain patient confidentiality by executing a confidentiality agreement with the authorized recipient.

(2) Any recipient seeking to become an authorized recipient in the program shall complete and provide to the Board the Legend Drug Repository Authorized Recipient Form that includes the specific policies and procedures of the recipient for planned implementation of the repository program. The policies and procedures shall include drug acceptance, destruction or transfer for unauthorized unaccepted drugs, quarantine of donated drugs, the electronic or written maintenance of inventory, storage and maintenance of donated drugs, recordkeeping of dispensed drugs and patient eligibility affidavit forms, separation of donated drugs, and repackaging of donated drugs.

(3) The board may revoke the authorization of a recipient to participate in the program by issuing a written notice to the recipient. The[Such] revocation shall include references to the specific requirements that were violated and the corrective actions necessary for the recipient to resume its participation in the program.

(4) [Nothing in this chapter shall require] A health facility, pharmacy, pharmacist, or practitioner shall not be required to participate in the program established by this section.

(5) A drug manufacturer, repackager, or wholesaler other than a returns processor participating in this program shall comply with the requirements of 21 U.S.C. Sections 360-1 through 360-4 relating to drug supply chain security.

Section 3. Accepting, Inspecting, and Storing Drugs. (1) In accordance with KRS 315.454, an authorized recipient shall[may] only accept into inventory donated drugs that:

(a) 1. Are in original, unopened, sealed, and tamper-evident packaging; or

2. Have been repackaged under this program in accordance with Section 4(4)[4.4];

(b) If in a single unit dose, have[the] packaging that is[of that dose must be] unopened;

(c) Are not classified as a controlled substance;

(d) Are not visually adulterated or misbranded;

(e) Are not samples;

(f) Have an expiration date of ninety (90) days or greater, unless the drug:

1. Is in high demand, as determined by the professional judgement of the authorized recipient; and

2. Can be dispensed for use prior to the drug’s expiration date;

(g) [Have packaging that lists the lot number of the drug;

(h)] Are not considered to be medical supplies;

(h)[(f)] Do not require only being dispensed to a patient registered with the drug’s manufacturer in accordance with federal Food and Drug Administration requirements, in accordance with KRS 315.460, and

(i)[(f)] Have a USP-recognized method to detect improper

temperature variations if the drugs require temperature control other than “room temperature storage.”

(2)(a) Donated drugs that do not meet the requirements of Section 3(1) shall[3.1 must] be disposed by returning it to the drug donor, destroying it by incinerator, medical waste hauler, or other lawful method, or transferring it to a return processor.

(b) A record of disposed drugs shall consist of the:

1. Disposal method [as] described in paragraph (a) of this subsection;[above,]

2. The date of the disposal; ; and

3. The name, strength, and quantity of each drug disposed.

(c) [No] Other records[record] of disposal shall not be required.

(3) All drugs received but not yet accepted into repository inventory shall be quarantined in a separate, designated area.

(4)(a) Prior to or upon acceptance offacepting] a donation or transfer into inventory, an authorized recipient shall maintain a written or electronic inventory of the donation, consisting of the:

1. Name, strength, and quantity of each accepted drug; ; and

2. [the] Name, address, phone number, and permit or license number, if applicable, of the donor.

(b) This record shall not be required if the two (2) parties are under common ownership.

(c) [No] Other records[record] of donation shall not be required.

(5) An authorized recipient shall store and maintain donated drugs in a manner that distinguishes them[physically separated] from other non-donated inventory and in a secure and temperature-controlled environment that meets the drug manufacturers’ recommendations and USP Chapter 659, Packaging and Storage Requirements[standards].

Section 4. Safe Distribution and Dispensing of Drugs. (1) [Notwithstanding any other law or rule,] An authorized recipient may:

(a) Distribute donated drugs to another authorized recipient or to an entity participating in a drug donation program operated by another state.

(b) Repackage donated drugs as necessary for storage, dispensing, administration, or distribution in accordance with Section 4(4)[4.4].

(c) Replenish drugs of the same drug name and strength previously dispensed or administered to eligible patients in accordance with 21 U.S.C. 340B.

(2) An authorized recipient shall[may] only administer or dispense drugs that:

(a) Meet the requirements of Section 3(1) and are not[3.1, including not being] visually adulterated or misbranded, as determined by a pharmacist employed by, or under contract, with the health facility or pharmacy;

(b) Are, if dispensed to a patient, repackaged into a new container or have all previous patient information on the donated container redacted or removed;

(c) Are properly labeled in accordance with KRS 217.816;

(d) Have an expiration date that will not expire before the full use by the patient based on the prescribing practitioner’s directions for use; and

(e) Are;

1. Prescribed by a physician, advanced registered nurse, or a physician assistant; and

2. Dispensed by a pharmacist in accordance with KRS 315.454(1)(d).

(3) An authorized recipient shall only[may] dispense or administer drugs to an eligible patient if permitted by KRS Chapter 315 and 201 KAR Chapter 2[only if otherwise permitted by law]. Prescription drugs shall:

(a) [may] Only be dispensed or administered to patients pursuant to a valid prescription drug order; and

(b) [shall] Have patient-specific written or electronic records maintained in accordance with KRS Chapter 315 and 201 KAR Chapter 2.

(4)(a) Repackaged drugs shall be:

1. Labeled with the drug name, strength, and expiration date; ;

and

2. [shall be] Kept in a separate designated area until inspected and initialed by a pharmacist.

(b) If multiple packaged donated drugs with varied expiration dates are repackaged together, the shortest expiration date shall be used.

(5) The donation, distribution, transfer, receipt, or facilitation of donations, distribution, transfers, and receipt of drugs pursuant to this chapter shall not be considered wholesale distribution and shall not require licensing as a wholesale distributor.

(6) An entity participating in a drug donation or repository program operated by another state may participate in ~~the Kentucky~~[this] program, and in the case of a pharmacy, may dispense donated drugs to residents of ~~Kentucky~~[this state]. This entity ~~shall be~~[is] required to comply with all ~~Kentucky statutes~~[laws] and ~~administrative regulations~~[rules in this state].

(7) Indigent and uninsured patients shall have priority access to drugs dispensed through the repository program. If a drug is available and no indigent or uninsured patient requests dispensing of the drug, the drug shall be made available to underinsured patients before dispensing to others. All authorized recipients shall use the Patient Eligibility Affidavit Form provided by the board ~~or a substantively similar physical or electronic form~~ when confirming a patient's status as indigent, uninsured, underinsured or other.

(8) ~~A~~[No] legend drug or supply needed to administer a legend drug that ~~is~~[are] donated for use under this program ~~shall not~~[may] be resold.

(9) All legend drugs, with the exception of controlled substances and extemporaneously compounded drugs, ~~shall be~~[are] eligible for dispensing under this program.

(10) ~~A~~[No] handling fee shall ~~not~~ be charged to a patient for pharmacy dispensing of a repository drug.

~~(11) Drugs specified in a recall notice shall be considered recalled unless the drug has an affixed lot number to exclude it from the recall.~~

~~(12) An authorized recipient may dispense a therapeutic equivalent drug product under the following conditions:~~

~~(a) The ordering practitioner has indicated "formulary compliance approval" on the prescription, in one (1) of the following ways:~~

~~1. In the practitioner's own handwriting; or~~

~~2. By checking a "formulary compliance approval" box on a preprinted form;~~

~~(b) The pharmacist, within twenty-four (24) hours of the formulary compliance substitution, shall notify the ordering practitioner, in an original writing or by facsimile:~~

~~1. That the pharmacist engaged in formulary compliance; and~~

~~2. Of the therapeutic equivalent drug product that was dispensed.~~

~~(c) The pharmacist may make adjustments in the quantity and directions to provide for an equivalent dose of the preferred formulary therapeutic alternative.~~

Section 5. Forms and Recordkeeping. (1) All records required by this chapter shall be retained in physical or electronic format, on or off the authorized recipient's premise for a period of five (5) years. A donor or authorized recipient may contract with one another or a third-party to create ~~and~~[and/or] maintain records on each other's behalf. An identifier, such as a serial number or barcode, may be used in place of any or all information required by a record or label pursuant to this chapter if it allows for ~~this~~[such] information to be readily retrievable. Upon request by the board, the identifier used for requested records shall be replaced with the original information. An identifier shall not be used on patient labels when dispensing or administering a drug.

(2) An entity ~~that~~[which] chooses to participate in the program shall make all records available to audit by the board within forty-eight (48) hours.

(3) ~~if~~[When] performing any action associated with this program or otherwise processing donated drugs for tax, manufacturer, or other credit, an authorized recipient is considered

to be acting as a returns processor and shall comply with all recordkeeping requirements for nonsaleable returns, in accordance with 21 U.S.C. 360~~eee~~[under federal law].

(4) A donation, or other transfer of possession or control, shall not be construed as a change of ownership unless ~~it is~~[is] specified ~~as such~~[by] the authorized recipient. If a record of the donation's transaction information or history is required, the history shall:

(a) Begin with the donor of the drugs;

(b) ~~shall~~ Include all prior donations; ~~and~~

(c) ~~if~~ If the drugs were previously dispensed, ~~shall~~ only include drug information required to be on the patient label in accordance with KRS Chapter 315 and 201 KAR Chapter 2.

Section 6. ~~[Authority. This chapter shall have sole authority over the program and shall supersede any inconsistent law or rule.~~

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

(a) "USP 659 Packaging and Storage Requirements," 05/2017;

(b) "Legend Drug Repository Authorized Recipient Form," Form Rep. 1121A (12/2021);

(c) "Legend Drug Repository Patient Eligibility Affidavit Form," Form Rep. 1121B (12/2021).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and may be accessed online at <https://pharmacy.ky.gov/Forms/Pages/default.aspx>.

CONTACT PERSON: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7913, fax (502) 696-3806, email Christopher.Harlow@ky.gov.

BOARDS AND COMMISSIONS

**Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, May 10, 2022)**

201 KAR 17:110. Telehealth and telepractice.

RELATES TO: KRS 334A.188, 334A.200, 211.332, 211.334, 211.336, 211.338

STATUTORY AUTHORITY: KRS 334A.080(1), 334A.200, 211.336(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.200 requires the Board of Speech- Language Pathology and Audiology to promulgate administrative regulations to implement the use of telehealth services by speech-language pathologists and audiologists. KRS 211.336 establishes requirements for state agencies that promulgate administrative regulations relating to telehealth. This administrative regulation establishes requirements for the use of telehealth services.

Section 1. Definitions. (1) "Client" means the person receiving the services of the speech-language pathologist or audiologist and the representative thereof if required by law.

(2) "Telehealth" is defined by KRS 334A.200(3) and 211.332(5).

(3) "Telepractice" means the practice of speech-language pathology or audiology, as defined by KRS 334A.020(4) and KRS 334.020A(6) respectively, provided by using communication technology that is two (2) way, interactive, and simultaneously audio and video.

Section 2. Client Requirements. A practitioner-patient relationship ~~may~~[shall not] commence via telehealth. An in-person initial meeting shall not be required unless the provider determines it is medically necessary to perform those services in person as set forth in KRS 211.336(2)(a). ~~[An initial, in-person meeting for the practitioner and patient who prospectively utilize telehealth shall~~

œœœœ.] A licensed health care practitioner may represent the licensee at the initial[, in-person] meeting. A licensee who uses telehealth to deliver speech-language pathology or audiology services or who telepractices or the licensed healthcare practitioner representing the licensee shall, at the initial[, in-person] meeting 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 licensee other than electronically;
- (4) Document if the client has the necessary knowledge and skills to benefit from the type of telepractice provided by the licensee; [and]
- (5) In accordance with KRS 334A.200(1)(a) and 900 KAR 12:005 Section 2(3)(1)(e), obtain the informed consent of the client; and
 - (6) Inform the client in writing about:
 - (a) The limitations of using technology in the provision of telepractice;
 - (b) Potential risks to confidentiality of information due to technology in the provision of telepractice as required by KRS 334A.200(1)(b);
 - (c) Potential risks of disruption in the use of telepractice;
 - (d) When and how the licensee will respond to routine electronic messages;
 - (e) In what circumstances the licensee will use alternative communications for emergency purposes;
 - (f) Who else may have access to client communications with the licensee;
 - (g) How communications can be directed to a specific licensee;
 - (h) How the licensee stores electronic communications from the client; and
 - (i) That the licensee may elect to discontinue the provision of services through telehealth.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A licensee using telehealth to deliver services or who telepractices shall:

- (1) Limit the telepractice to the licensee's scope of practice;
- (2) Maintain continuing competency or associate with a group who has experience in telehealth delivery of care;
- (3) Use methods for protecting health information, which shall include authentication and encryption technology as required by KRS 334A.200(1)(b) and KRS 211.332(5)(c);
- (4) Limit access to that information to only those necessary for the provision of services or those required by law; and
- (5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. (1) A licensee using telehealth to deliver speech-language pathology and audiology services and telepractice shall [~~comply with~~]:

- (a) Maintain patient privacy and security in accordance with 900 KAR 12:005 Section 2(2); ~~(1)(b);~~ [State law by being licensed to practice speech language pathology or audiology, whichever is being telepracticed, in the jurisdiction where the practitioner-patient relationship commenced;] and
- (b) Comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.
 - (2) If a person provides speech-language pathology and audiology services via telepractice to a person physically located in Kentucky at the time the services are provided, that provider shall be licensed by the board or be a provider who is a participant in the audiology and speech-language pathology interstate compact recognized in KRS 334A.188 and delivers telehealth services to a person in Kentucky under the standards and provisions of that interstate compact pursuant to KRS 211.336(2)(f).
 - (3) A person providing speech-language pathology and audiology services via telepractice from a physical location in

Kentucky shall be licensed by the board. This person may be subject to licensure requirements in other states where the services are received by the client.

Section 5. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services or who telepractices:

- (1) Shall conform to the statutes and regulations governing the provision of speech-language pathology and audiology services in Kentucky;
- (2) Shall not engage in false, misleading, or deceptive advertising of telepractice in violation of KRS 334A.200(2)(a); and
- (3) ~~(2)~~ Shall not split fees in violation of KRS 334A.200(2)(b).

CONTACT PERSON: Kevin R. Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, 264 SC, Frankfort, Kentucky 40601, phone (502) 782-8805 (office), email KevinR.Winstead@ky.gov.

BOARDS AND COMMISSIONS
Board of Nursing
(As Amended at ARRS, May 10, 2022)

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 ~~to~~ and ~~to~~ 314.991. KRS 314.041 and 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 who are Graduates of Foreign Nursing Schools. [~~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 by endorsement as a registered nurse shall obtain and submit to the board documentation as provided in KRS 314.041(10)(b) [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. The report shall state whether the applicant's program of nursing is comparable to an approved program in the state].
 - (b) An applicant for licensure by endorsement as a licensed practical nurse shall obtain and submit to the board documentation as provided in KRS 314.051(11)(b) [also complete an English Language Proficiency examination pursuant to Section 2 of this administrative regulation]. [~~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.]

(5) **An applicant shall also complete an English Language Proficiency examination pursuant to Section 2 of this administrative regulation.**

(6) 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 **an 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 examination shall ~~be~~~~examinations are~~ recognized by the National Council of the State Boards of Nursing (NCSBN), and the applicant shall obtain a ~~[with the]~~ minimum passing standard recommended by the NCSBN:

~~(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 who is a graduate of a foreign nursing school shall meet the requirements established in 201 KAR 20:140.

(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 by endorsement 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.]

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.

**BOARDS AND COMMISSIONS
Board of Physical Therapy
(As Amended at ARRS, May 10, 2022)**

201 KAR 22:020. Eligibility and credentialing procedure.

RELATES TO: KRS ~~[164.772]~~ 327.010, 327.050, 327.060, 327.075, 327.080, 327.310

STATUTORY AUTHORITY: KRS 327.040(1), (11), (13)

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

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

- (1) Examination;
- (2) Endorsement; or
- (3) Reinstatement.

Section 2. Examination Candidate.

(1) To be eligible for the examination, the applicant for licensure as a physical therapist shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy program accredited by CAPTE;

(b) Submit certification of completion by the educational administrator of that program;

(c) Have successfully completed the Jurisprudence Exam;

(d) Submit a complete Application for credentialing that includes a photo taken within one (1) year;

(e) Submit the correct, nonrefundable fee as required in 201 KAR 22:135;

(f) ~~[Effective six (6) months after the board receives an Originating Agency Number from the Federal Bureau of Investigation,]~~ Submit to the board a completed nationwide criminal background check[;] as required by KRS 327.310[;] with the background investigation completed no later than six (6) months prior to the date of the filing of the application;

(g) If applicable, submit on an Applicant Special Accommodations Request Form a request for a reasonable accommodation in testing due to a documented disability; and

(h) Register for the NPTE examination.

(2) To be eligible for the examination, the applicant for certification as a physical therapist assistant shall:

(a) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE; and

(b) Complete the requirements of subsection (1)(b) through (h) of this section.

(3) Effective July 1, 2012, after six (6) failed attempts at either the physical therapist or physical therapist assistant examination, or combination thereof, in any jurisdiction, an applicant for licensure or certification shall not be eligible to register for any additional examinations.

Section 3. An applicant for credentialing who is registered for the examination in another jurisdiction shall:

(1) Meet the eligibility requirements of Section 2 of this administrative regulation; and

(2) Register with the FSBPT Score Transfer Service to have results submitted to Kentucky.

Section 4. To be eligible for a temporary permit, the candidate shall:

(1) Meet the qualifications of Section 2 or 3 of this administrative regulation, except for the retake provisions in Section 2(3) of this administrative regulation;

(2) Complete a Supervisory Agreement for Applicant with Temporary Permit with one (1) or more physical therapists; and

(3) Have not failed either the physical therapist or physical therapist assistant examination in any jurisdiction.

Section 5. (1) Upon issuance of a temporary permit, the physical therapist or physical therapist assistant applicant shall practice only under the supervision of a physical therapist currently engaged in the practice of physical therapy in Kentucky who:

(a) Has practiced in Kentucky for more than one (1) year; and

(b) Has an unrestricted license.

(2) A supervising physical therapist:

(a) Shall be on-site at all times during the practice of the applicant with a temporary permit;

(b) Shall be responsible for the practice of physical therapy by the applicant with a temporary permit;

(c) Shall review, approve, date, and co-sign all physical therapy documentation by the applicant with a temporary permit;

(d) May designate an alternate supervising physical therapist who meets the qualifications of subsection (1)(a) and (b) of this section. The alternate supervising physical therapist shall sign and date written documentation of the acceptance of the responsibility

as identified in paragraph (a) through (c) of this subsection; and

(e) Shall notify the board immediately if the supervisory relationship is terminated.

(3) The applicant with a temporary permit shall:

(a) Disclose the applicant's temporary credential status to all patients prior to initiating treatment;

(b) Sign documentation with temporary permit number and designation as required~~defined~~ in 201 KAR 22:053, Section 5(5)(a) or (b); and

(c) Notify the board immediately if the supervisory relationship is terminated.

(4) The temporary permit shall expire the earlier of:

(a) Six (6) months from the date of issuance; or

(b) Notice of exam results by the board. A temporary permit holder who is registered for the examination in another jurisdiction shall register with the FSBPT Score Transfer Service to have results submitted to Kentucky within forty-eight (48) hours of the release of the exam results.

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

Section 7. To be eligible for credentialing by endorsement, the applicant shall:

(1) Have successfully completed the academic and clinical requirements of a physical therapy or physical therapist assistant program accredited by CAPTE;

(2) Meet the requirements established in Section 2(1)(b) through (f) of this administrative regulation;

(3) Have successfully completed the NPTE or its equivalent, predecessor examination and register with the FSBPT Score Transfer Service to have results submitted to Kentucky:

(a) A passing score in Kentucky for the person who took the NPTE prior to July 1, 1993, shall be at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); or

(b) After July 1, 1993, a passing score shall be the criterion referenced passing point recommended by the FSBPT set equal to a scaled score of 600;

(4) Have an active credential in this profession in another jurisdiction; and

(5) Have verification of credentials showing the credential has never been revoked, suspended, placed on probation, or is not under disciplinary review in another jurisdiction upon application.

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

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

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

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Credentialing", December 2011;

(b) "Supervisory Agreement for Applicant with Temporary Permit", January 2017; and

(c) "Applicant Special Accommodations Request Form", February 2022~~December 2012~~.

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

(3) This material is also available on the board's Web site at pt.ky.gov/Forms/Pages/Exam-Applicant.aspx.

CONTACT PERSON: Stephen Curley, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-

7142, email stephen.curley@ky.gov.

**BOARDS AND COMMISSIONS
Board of Physical Therapy
(Amendment)**

201 KAR 22:170. Physical Therapy Compact Commission.

RELATES TO: KRS 327.300(12)

STATUTORY AUTHORITY: KRS 327.300(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.300(12) requires the Board of Physical Therapy to review any rule adopted by the Physical Therapy Compact Commission within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS Chapter 13A.190 and for filing the rule as an accompanying ordinary administrative regulation, following the requirements of KRS Chapter 13A. This administrative regulation sets forth the Rules adopted by the Physical Therapy Compact Commission.

Section 1. The Kentucky Board of Physical Therapy shall comply with all bylaws, rules, and administrative regulations of the Physical Therapy Compact Commission, which includes the Physical Therapy Compact Commission Rules and Bylaws.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Physical Therapy Compact Commission Rules", October 2021~~2020~~; and

(b) "Physical Therapy Compact Commission Bylaws", October 2021~~2020~~.

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

(b) This material may be obtained on the Kentucky Board of Physical Therapy's Web site at <https://pt.ky.gov>.

(3) This material may also be obtained at:

(a) The Physical Therapy Compact Commission, 124 West Street South, Third Floor, Alexandria, Virginia, 22314; or

(b) <http://www.ptcompact.org>.

STEPHEN CURLEY, Executive Director

APPROVED BY AGENCY: January 20, 2022

FILED WITH LRC: February 10, 2022 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 26, 2022, at 3:00 p.m. (ET). Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. All individuals who notify this agency in writing at least five workdays prior to this hearing shall be notified whether the hearing will be held virtually by video teleconference or in person at the Board's office, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222. If no notification of intent to attend the hearing is received in writing by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until April 30, 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: Stephen Curley, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140 and fax (502) 429-7142, email stephen.curley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen Curley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the rules and bylaws for the Physical Therapy Compact Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.300(12).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It promulgates the rules and bylaws established by the Physical Therapy Compact Commission as administrative regulations pursuant to KRS 327.300(12).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement that any rule or bylaw adopted by the Physical Therapy Compact Commission receive appropriate oversight.

(2) If 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 Physical Therapy Compact Rules and Bylaws dates will be updated.

(b) The necessity of the amendment to this administrative regulation: The amendment to the Physical Therapy Compact Rules and Bylaws is necessary to comport with the requirements of KRS 327.300(12).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the Physical Therapy Compact Rules and Bylaws is necessary to comport with the requirements of KRS 327.300(12).

(d) How the amendment will assist in the effective administration of the statutes: The Physical Therapy Compact Rules and Bylaws will be the most up-to-date version.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Compact Privilege applicant and holders totaling around 150 right now.

(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 rule change 3.8 Clarifies the jurisprudence requirement when purchasing a compact privilege, and 3.11 rule addition requiring self-reporting of confidential alternative programs by the individual. The amendments to the bylaws establish Compliance Committee as a new standing committee to Article VII. Section 2.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Credentialed physical therapists and physical therapist assistants in Kentucky will be able to participate in the Physical Therapy Licensure Compact.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund and funds derived from compact privilege applications from other states.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation

applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.300(12).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS

Board of Licensure and Certification for Dietitians and Nutritionists

(As Amended at ARRS, May 10, 2022)

201 KAR 33:015. Application; approved programs.

RELATES TO: KRS 310.021, 310.031(1), (2)

STATUTORY AUTHORITY: KRS 310.041(1), (2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 310.041

requires the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists to promulgate administrative regulations and to review and approve or reject the qualifications of all applicants for licensure and certification. This administrative regulation establishes the procedure for submitting an application for licensure[or] certification, or dual licensure as a nutritionist and as a dietitian; and establishes requirements for programs of study[institutions] to be approved by the board.

Section 1. Application.

(1) An [Application for Licensure, Certification, or Dual Licensure] shall be submitted for licensure to practice dietetics after the requirements established in KRS 310.021 are met.

(2) An [Application for Licensure, Certification, or Dual Licensure] shall be submitted for certification to practice nutrition after the requirements established in KRS 310.031 are met.

(3) An [Application for Licensure, Certification, or Dual Licensure] shall be submitted for dual licensure to practice dietetics and nutrition after the requirements established in KRS 310.021 and [KRS] 310.031 are met.

(4)[(3)] Each [Application for Licensure, Certification, or Dual Licensure] shall be accompanied by the nonrefundable application fee, established in 201 KAR 33:010.

(5)[(4)] Each application shall be signed by the applicant.

(6)[(5)](a) Each application to practice dietetics and each application for dual licensure shall include:

1. A copy of the applicant's current registration card issued by the Commission on Dietetic Registration; [or]

2. A letter from the Commission on Dietetic Registration indicating successful completion of the registration examination[.];

or

3. A Credential Verification Statement from the Commission on Dietetic Registration.

(b) An Academy of Nutrition and Dietetics membership card shall not constitute compliance with paragraph (a)1. of this subsection.

(7)(6) Each application to practice nutrition and each application for dual licensure shall include a certified copy of the applicant's official master's transcript or meet the criteria established in set forth at KRS 310.031(3).

(8)(7) If the applicant is or was licensed or registered in another jurisdiction, the applicant shall:

(a) List each jurisdiction and license or registration number;

(b) Provide a complete licensure disciplinary history; and

(c) Provide license verification documentation from each respective jurisdiction that is:

1. Created by each respective jurisdiction within the sixty (60) days prior to the submission of the application; and

2. Is not a license card, scroll, initial certificate, diploma, or other initial license document. [submit a complete Verification of Licensure in Other Jurisdictions form for all jurisdictions where the applicant is currently or has formerly been licensed or registered.]

Section 2. Approved Programs.

(1) A baccalaureate degree from a college or university approved by the board pursuant to KRS 310.021(3) or 310.031(2)(a) shall be a degree program that is listed as accredited by the Accreditation Council for Education in Nutrition and Dietetics.

(2) If an applicant's baccalaureate degree is not listed as accredited by the Accreditation Council for Education in Nutrition and Dietetics, then the applicant shall demonstrate at least forty-five (45) semester hours or sixty-eight (68) quarter hours, as evidenced by a certified copy of an academic transcript, of coursework at the baccalaureate or graduate level in addition to the hours required by KRS 310.031(2)(b). The coursework shall include content specific to each of the following areas:

- (a) Communication;
- (b) Counseling;
- (c) Physical and biological sciences;
- (d) Social sciences;
- (e) Research;
- (f) Food composition;
- (g) Nutrient metabolism;
- (h) Food systems management;
- (i) Nutrition therapy;
- (j) Lifecycle nutrition; and
- (k) Healthcare systems.

(3) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall include only didactic hours of graduate credit specifically related to human nutrition. Examples include:

- (a) Food sources of nutrients;
- (b) Physiological and chemical processes of digestion, absorption, and metabolism;
- (c) Nutrient needs throughout the life cycle;
- (d) Nutrition assessment processes;
- (e) Pathophysiology of disease states;
- (f) Medical nutrition therapy;
- (g) Nutrient needs in exercise and fitness; and
- (h) Nutrition in health and wellness.

(4) The twelve (12) semester hours of graduate credit required by KRS 310.031(2)(b) shall not include practicums, courses that are primarily obtained from work experiences, independent study, thesis, or dissertation credit hours.

Section 3. Incorporation by Reference.

(1) "Application for Licensure, Certification, or Dual Licensure"; January 2022, is incorporated by reference. [The following material is incorporated by reference:

- (a) "Application for Licensure or Certification", July 2015; and
- (b) "Verification of Licensure in Other Jurisdictions", July 2015.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of

Licensure and Certification for Dietitians and Nutritionists, 500 Mero Street, 2SC32, [Division of Occupations and Professions, 914 Leewood 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**] https://bdn.ky.gov/.

CONTACT PERSON: August Lincoln Pozgay, Executive Advisor, Public Protection Cabinet, 500 Mero Street, 2NCWK#2, Frankfort, Kentucky 40601, phone 502-782-0714, fax 502-564-4818, email august.pozgay@ky.gov.

**BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(As Amended at ARRS, May 10, 2022)**

201 KAR 35:070. Supervision experience.

RELATES TO: KRS 309.0814, 309.083(4), **309.0830**, 309.0831, 309.0832, 309.0833, **309.0834**, 309.0841, 309.0842; **309.0830, 309.0834]**

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813(1) requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.080 through 309.089. KRS 309.0813(3) requires the board to approve or disapprove those persons who shall be credentialed. This administrative regulation establishes the standards for the accumulation of required supervised work experience for licensed alcohol and drug counselors, licensed clinical alcohol and drug counselors, licensed clinical alcohol and drug counselor associates, certified alcohol and drug counselors, certified alcohol and drug counselor associates II, certified alcohol and drug counselor associates I, and registered alcohol and drug peer support specialists.

Section 1. ~~[(1)(a)]~~ Peer Support Specialist Supervision.

(1)(a) Peer support specialist supervision shall continue throughout the period of registration. The supervision shall include the four (4) following domains:

- 1. Advocacy;
- 2. Ethical Responsibility;
- 3. Mentoring and Education; and
- 4. Recovery and Wellness Support.

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

(2) Clinical Supervision for Certification and Licensure Applicants. Clinical supervision shall include a minimum of ten (10) hours in each of the following four (4) domains:

- (a) Screening assessment and engagement;
- (b) Treatment planning, collaboration, and referral;
- (c) Counseling; and[;]
- (d) Professional and ethical responsibilities.[;]

(3) Clinical supervision shall ~~meet the minimum requirements of the following~~:

(a) For applicants with a high school diploma or high school equivalency diploma, ~~require~~**requires** 300 hours of clinical supervision with a minimum of ten (10) hours in each domain listed in subsection (2);

(b) For applicants with an associate's degree in a relevant field, ~~require~~**requires** 250 hours of clinical supervision with a minimum of ten (10) hours in each domain;

(c) For applicants with a bachelor's degree in a relevant field, ~~require~~**requires** 200 hours of clinical supervision with a minimum of ten (10) hours in each domain; and

(d) For applicants with a master's degree or higher in a relevant field, ~~require~~**requires** 100 hours of clinical supervision with a minimum of ten (10) hours in each domain.

(4)(a) Clinical supervision may occur in individual or ~~[in]~~group

settings.

(b) The methods of clinical supervision shall include:

1. Face-to-face;
2. Video conferencing; or

3. Observation, which includes a period of discussion to critique the observed sessions, accompanied by a written explanation ~~that~~~~which~~ includes strengths and deficiencies observed by the supervisor, and develops goals for the supervisee[Teleconferencing].

(5) Supervision that exceeds two (2) hours in a single day shall be accompanied by a written explanation justifying the length of supervision exceeding two (2) hours.

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

(7) For applicants applying for licensure who already possess a certified alcohol and drug counselor credential, supervision obtained under KRS 309.083 prior to February 5, 2016 shall be calculated toward the 100 hour supervision requirement under KRS 309.0832(3) and subsection (3)(d) of this section.

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

Section 3. (1) All supervision requirements shall:

(a) Be met with face-to-face individual or group weekly contact between supervisor and supervisee except as established in subsection (2) of this section and Sections 13 and 14 of this administrative regulation;

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

(c) Include additional supervision sessions, as needed.

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

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

(4) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board within thirty (30) days of the termination.

Section 4. (1)(a) A certified alcohol and drug counselor, licensed alcohol and drug counselor, or licensed clinical alcohol drug counselor requesting to become approved by the board to provide supervision shall:

1. Submit a complete and signed Form 4, Request to Provide Supervision;

2. For a certified alcohol and drug counselor or licensed alcohol and drug counselor, have at least two (2) years of post-certification experience, including Alcohol and Drug Counselor credentials transferred through reciprocity, and have attended the board-sponsored supervision training;

3. For a licensed clinical alcohol and drug counselor, have at least twelve (12) months of post-licensure experience, including Advanced Alcohol and Drug Counselor credentials transferred through reciprocity, or have attended the board-sponsored supervision training; and

4. Submit information as to whether or not the applicant has any unresolved complaints against the applicant's license or certification in Kentucky or any other state and, if there is an unresolved complaint, submit official documentation of the complaint or complaints.

(b) The board shall consider the severity, frequency, and history of violations and unresolved complaints.

(c) A person approved by the board on or after March 24, 2021 to provide supervision shall will have a maximum of five (5) consecutive years from the date of the approval to meet the requirements of KRS 309.0834(1) to become a certified clinical supervisor, and can continue to provide supervision until the earlier of the expiration of the five (5) year period or the date they become a certified clinical supervisor.

(d) [The]Approval as a supervisor pursuant to this subsection shall be limited to five (5) years, shall not [cannot] be extended past the five (5) year limit, and shall be [is] available only once in the person's lifetime.

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

(3) A certified alcohol and drug counselor or licensed clinical alcohol and drug counselor shall not be the supervisor of record for more than twenty-five (25) supervisees.

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

(5) The board may extend certification as a certified clinical supervisor to a person who is approved to provide clinical supervision but does not meet all the provisions of KRS 309.0834(1) if the person:

(a) Submits a complete KBADC Form 24, Application For Grandparenting as a Certified Clinical Supervisor, with payment of the application fee required by 201 KAR 35:020[32:020] Section 1(1);

(b) Is a licensed clinical alcohol and drug counselor or a certified alcohol and drug counselor in Kentucky prior to March 24, 2021;

(c) Was approved by the board to provide clinical supervision prior to March 24, 2021; and

(d) Pays the certification fee required by 201 KAR 35:020 Section 3(4) after the board's approval of their KBADC Form 24, Application For Grandparenting as a Certified Clinical Supervisor. A person approved by the board before March 24, 2021 to provide clinical supervision shall, within twelve (12) months of the effective date of this amendment to this administrative regulation, apply for grandparenting as a certified clinical supervisor pursuant to this subsection.

Section 5.

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

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

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

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

(5) The supervisor of record shall be responsible for the practice of alcohol and drug counseling or peer support services provided by the supervisee. If the board receives a complaint concerning a supervisee, the board shall notify the supervisor of record.

(6) For each certificate or license holder supervised, the supervisor shall maintain a KBADC Form 13, Verification of Clinical Supervision, for each supervisory session that shall include the domain covered, date of session, length of session, and method of

supervision of the session. For each registrant supervised, the supervisor shall maintain a KBADC Form 8, Peer Support Specialists Verification of Supervision Form, for each supervisory session that shall include the date, length, method, and domain covered during the session. This record shall be maintained for a period of not less than six (6) years after the last date of supervision.

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

(2) The report shall include:

- (a) A description of the frequency, format, and duration of supervision;
- (b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and
- (c) Other information that could be relevant to an adequate assessment of the practice of the supervisee.

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

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

Section 8. If the supervisee is a licensed clinical alcohol and drug counselor associate, a temporary certified alcohol and drug counselor, certified alcohol and drug counselor associate I, or certified alcohol and drug counselor associate II, the supervisor of record shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Have knowledge of the methods and techniques being used by the supervisee;

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

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

Section 10. (1) The supervisee shall:

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

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

(2) The supervisee shall:

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

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

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

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

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

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

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

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

(2)(a) Within ten (10) days of the establishment of the temporary supervisory arrangement, the supervisee shall notify the board of the extenuating circumstances that have caused the supervisee to require temporary supervision.

(b) The supervisee shall submit, in writing, a plan for resolution

of the situation within thirty (30) calendar days of the establishment of the temporary supervisory arrangement.

(c) The written plan shall include:

1. The name of the temporary supervisor;
 2. Verification of the credential held by the temporary supervisor;
 3. An email address and a postal address for the temporary supervisor and the supervisee; and
 4. A telephone number for the temporary supervisor.
- (3) The temporary supervisory arrangement shall expire after sixty (60) days of the establishment of the temporary supervisory arrangement.

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

- (a) A temporary alcohol and drug counselor shall submit a completed KBADC Form 3, Supervisory Agreement; or
- (b) A peer support specialist shall submit a completed KBADC Form 6, Peer Support Specialist Supervisory Agreement.

Section 12. Identification of Provider and Supervisor of Record. The actual deliverer of a service shall be identified to the client, and the client shall be informed of the deliverer's credential and name of supervisor of record.

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

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

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

(4) The supervisor shall:

- (a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;
- (b) Meet with the disciplined credential holder and the board liaison to:

1. Summarize the actions and concerns of the board;
2. Review the goals and expected outcomes of supervision submitted by the board liaison;
3. Develop a specific plan of supervision approved by the board; and
4. Review the reporting requirements that shall be met during the period of supervision;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) "KBADC Form 3, Supervisory Agreement", March 2021;
- (b) "KBADC Form 4, Request to Provide Supervision", June 2021;
- (c) "KBADC Form 6, Peer Support Specialist Supervisory Agreement", March 2021;
- (d) "KBADC Form 7, Supervision Evaluation", March 2021;
- (e) "KBADC Form 8, Peer Support Specialist Verification of Supervision", March 2021;
- (f) "KBADC Form 9, Supervision Evaluation for Peer Support Specialist", March 2021;
- (g) "KBADC Form 13, Verification of Clinical Supervision", ~~March 2021~~ May/January 2022; [and]
- (h) "KBADC Form 14, Supervision Annual Report", March 2021; ~~and~~ [-]
- (i) "KBADC Form 24, Application For Grandparenting as a Certified Clinical Supervisor". May/January 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Alcohol and Drug Counselors, 500 Mero St, 2 SC 32, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. The board's Web site address is: <https://adc.ky.gov>.

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.

BOARDS AND COMMISSIONS

Board of Medical Imaging and Radiation Therapy (As Amended at ARRS, May 10, 2022)

201 KAR 46:060. Continuing education requirements.

RELATES TO: KRS 311B.050, 311B.110
STATUTORY AUTHORITY: KRS 311B.050(2), (4), 311B.110(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050(2) requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce KRS Chapter 311B. KRS 311B.050(4) and 311B.110(6) require the board to determine and enforce continuing education requirements and establish guidelines for the approval of continuing education. ~~[The board is authorized by]~~ KRS 311B.110(3) authorizes the board to require that all licensees obtain continuing education for ongoing knowledge of current practices in radiation safety and clinical procedures prior to licensure renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the approval of continuing education courses.

Section 1. Mandatory Continuing Education Units.

(1) Medical imaging technologists, advanced imaging professionals, radiographers, nuclear medicine technologists, and radiation therapists shall obtain a minimum of twenty-four (24) continuing education units per biennium.

(2) Limited X-Ray machine operators shall obtain a minimum of twelve (12) continuing education units per biennium.

VOLUME 48, NUMBER 12– JUNE 1, 2022

(3) A continuing education unit shall be earned by participating in fifty (50) contact minutes in an approved continuing education program.

Section 2. Methods of Acquiring Continuing Education.

(1) Continuing education units applicable to the renewal of a license shall be directly relevant to the professional growth and development of the medical imaging technologist, radiation therapist, advanced imaging professional, radiographer, nuclear medicine technologist, or limited x-ray machine operator.

(2) Continuing education units may be earned by completing any of the following educational activities:

(a) Academic courses relevant to the radiologic sciences or patient care and is offered by a post-secondary educational institution accredited by a mechanism recognized by the American Registry of Radiologic Technologists (ARRT) or the Nuclear Medicine Technologist Certification Board (NMTCB). Relevant courses in the biologic sciences, physical sciences, medical imaging[radiologic sciences], interventional procedures, radiation therapy, health and medical sciences, social sciences, verbal communication (oral[verbal] and written), mathematics, computer use related to medical imaging or radiation therapy[computers], management, cultural competency and ethics related to medical professionals, or post-secondary adult education methodology shall be considered for acceptance[accepted]. Some subject areas that shall not be applicable include formal education clinical hours or/ credits, independent study, courses in archeology, astronomy, fine arts, geology, geography, history, music, philosophy, and religion;

(b) Continuing education units approved by a professional organization recognized by the board or designated as a Recognized Continuing Education Evaluation Mechanism (RCEEM); or

(c) Continuing education units offered by other individuals, organizations, or institutions that have been approved by the board.

(3) Academic course credit equivalency for continuing education units shall be based on one (1) academic quarter credit hour is equal to twelve (12)[fifteen (15)] continuing education units or one (1) academic semester credit hour is equal to sixteen (16) continuing education units.

~~[(4) A presenter may earn for the development of a continuing education presentation a maximum of twice the continuing education units awarded for the delivery of the presentation. The presenter shall also receive the continuing education approved for attendance at the presentation.~~

~~(5) Credit shall not be issued for repeated instruction of the same course within the biennium.]~~

Section 3. Procedure for Preapproval of Continuing Education Programs.

(1) A continuing education program may be approved by two (2) mechanisms:

- (a) By applying and receiving approval from a RCEEM; or
- (b) By applying and receiving approval from the board.

(2) For board approval of continuing education programs, a person, agency, or company, "CE Sponsor", shall:

(a) Submit KBMIRT Form 9, Continuing Education Program Approval Request Form at least twenty (20) business days in advance of the date of the offering;

(b) Submit the continuing education approval fee as established by 201 KAR 46:020, Section 12;

(c) Provide program participants[participant(s)] with documentation of participation such as a certificate of completion;

(d) Participate in the audit of approved continuing education programs including presentation evaluations, attendance, and continuing education participation documentation, as requested by the board; and

(e) Comply with policies set forth by the board, the ARRT, and NMTCB regarding continuing education programs.

(3) A continuing education activity shall be approved if the board determines that the activity is appropriate. The criteria as established in paragraphs (a) through (d) of this subsection shall

be used by the board to determine the preapproval of a continuing education program.

(a) The activity shall enhance knowledge and skills associated with professional performance.

(b) It shall pertain to services provided to patients, the public, or medical profession by an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, a nuclear medicine technologist, or a limited x-ray machine operator.

(c) The presenter shall submit a curriculum vitae, an abstract, the objectives, and an outline of the presentation.

(d) The objectives shall be obtainable for the time frame, outline, and scope of the presentation.

Section 4. Responsibilities and Reporting Requirements of Licensee. A licensee shall be responsible for obtaining required continuing education units and submit documents only if requested by the board. Each licensee shall maintain all documentation verifying successful completion of continuing education units for the current and prior biennium. Documentation shall include:

(1) Official transcripts for completed academic courses;

(2) A copy of the program showing an individual as a presenter of an approved continuing education program; or

(3) Completion certificates or cards for continuing education programs.

Section 5. Audit Procedures. (1) The board shall audit a random selection of twenty-five (25) percent of limited x-ray machine operator licensees and ten (10) percent of all other licensees per year and notify the randomly-selected licensees.

(2) Each licensee selected for audit shall furnish documentation of completed continuing education units on KBMIRT Form 8, Licensee Continuing Education Documentation Form, for the identified time frame, and provide the board with a copy of the certificates or records of completion.

(3) Failure to comply with an audit may result in non-renewal, suspension or revocation of license.

Section 6. Temporary Licensees. Continuing education requirements shall not apply to the holders of a temporary license.

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

(a) KBMIRT Form 9, "Continuing Education Program Approval Request Form", March 2020; and

(b) KBMIRT Form 8, "Licensee Continuing Education Documentation Form", March 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 125 Holmes Street, Suite 320, 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 <https://kbmirt.ky.gov>.**

CONTACT PERSON: Elizabeth Morgan, Executive Director, 125 Holmes Street, Suite 320, Frankfort, Kentucky 40601, phone +1 (502) 782-5687, fax +1 (502) 782-6495, email elizabeth.morgan@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, May 10, 2022)

301 KAR 4:010. Districts.

RELATES TO: KRS 150.010, 150.022(1), 150.025
STATUTORY AUTHORITY: KRS 150.022, 150.025
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025
authorizes the department to regulate fish and wildlife resources.
KRS 150.022 authorizes wildlife districts. This administrative
regulation designates the counties within each wildlife district. ~~It is
necessary to place each county in one (1) of the nine (9)
wildlife districts specified in KRS 150.022.~~

Section 1. Wildlife Districts.

~~(1)~~ For the purposes of representation on the Fish and
Wildlife Resources Commission, each county in Kentucky shall
be/is assigned to a wildlife district as established in
subsections (1) through (9) of this section.~~as indicated~~
~~below:~~

~~(1)(a)~~ District I - Fulton, Hickman, Carlisle, Ballard,
McCracken, Graves, Calloway, Marshall, Livingston, Lyon, Trigg,
Caldwell, Crittenden, and Christian.

~~(2)(b)~~ District II - Union, Webster, Hopkins, Muhlenberg,
Todd, Henderson, McLean, Logan, Simpson, Allen, Warren, Butler,
Ohio, Daviess, and Hancock.

~~(3)(c)~~ District III - Meade, Bullitt, Jefferson, Spencer, Oldham,
Breckinridge, and Shelby.

~~(4)(d)~~ District IV - Hardin, Grayson, Nelson, Washington,
Marion, Larue, Taylor, Adair, Cumberland, Monroe, Barren, Green,
Hart, Edmonson, and Metcalfe.

~~(5)(e)~~ District V - Carroll, Owen, Grant, Harrison, Robertson,
Bracken, Pendleton, Gallatin, Boone, Kenton, Campbell, Trimble,
and Henry.

~~(6)(f)~~ District VI - Franklin, Scott, Anderson, Woodford,
Fayette, Mercer, Jessamine, Boyle, Casey, Lincoln, Garrard,
Rockcastle, Lee, Estill, Powell, Clark, and Madison.

~~(7)(g)~~ District VII - Lawrence, Magoffin, Johnson, Martin,
Pike, Floyd, Breathitt, Knott, Perry, Letcher, Leslie, Harlan, and
Owsley.

~~(8)(h)~~ District VIII - Mason, Lewis, Greenup, Carter, Boyd,
Morgan, Wolfe, Menifee, Montgomery, Bath, Rowan, Fleming,
Nicholas, Bourbon, and Elliott.

~~(9)(i)~~ District IX - Clinton, Russell, Wayne, Pulaski, McCreary,
Whitley, Laurel, Clay, Knox, Bell, and Jackson.

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.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, May 10, 2022)

301 KAR 4:020. Ballard Wildlife Management Area
restrictions.

RELATES TO: KRS 150.010, 150.025, 150.300, 150.600
STATUTORY AUTHORITY: KRS ~~13A.350,~~ 150.025(1)(g)
NECESSITY, FUNCTION, AND CONFORMITY: **KRS**
150.025(1)(g) authorizes the department to promulgate
administrative regulations that apply to a limited area or to the
entire state. This administrative regulation establishes
provisions for Ballard Wildlife Management Area.~~This
administrative regulation pertains to entering upon the
premises and disturbing or poaching waterfowl and other
wildlife on Ballard Wildlife Management Area, located in
Ballard County. This administrative regulation is necessary to
prevent disturbance of migratory waterfowl. The function of
this administrative regulation is to insure that migratory~~

~~waterfowl and other wildlife are not disturbed or molested
during specified periods or in places that are closed. The
purpose of this amendment is to]update terminology and
][clarify the administrative regulation.]~~

Section 1. Trespass by Unauthorized Persons. A person shall
not enter upon the premises of the Ballard Wildlife Management
Area for any reason during the period of October 15 through March
15, except ~~the following authorized personnel~~:

- (1) Department employees acting under the direction of the
commissioner of the department;
- (2) The director of the Wildlife Division;
- (3) The Wildlife Management Area Manager;
- (4) U.S. Fish and Wildlife Service special agents; and
- (5) Persons participating in department managed activities.

Section 2. ~~(1) Carrying of Firearms or Accompanied by a
Dog. Only authorized personnel or U.S. Fish and Wildlife
Service special agents engaged in assigned duties, shall enter
upon the premises of the Ballard Wildlife Management Area
during the period October 15 through March 15, shall be
permitted to be accompanied by a dog and possess firearms
necessary to conduct permitted activities.~~

~~Section 3. Trespass by Boat.~~ During periods of high water or
flood, an unauthorized person shall not enter upon the premises of the
Ballard Wildlife Management Area by boat for any purpose.

(2) High water or flood conditions shall do not affect or
change the management area boundary, which is marked by
yellow signs.

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.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, May 10, 2022)

301 KAR 4:100. Peabody Wildlife Management Area use
requirements and restrictions.

RELATES TO: KRS 150.250, 150.620, 150.990
STATUTORY AUTHORITY: KRS 150.025(1), 150.195(4)(f),
(g), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS
150.620 authorizes the department to acquire lands for public
use, to promulgate administrative regulations for their
management, and to charge fees for their use. KRS 150.195(4)(f)
and (g) authorize the department to establish the term and
manner of license and permit sales. KRS 150.025(1) authorizes
the department to promulgate administrative regulations
necessary to carry out the purposes of KRS Chapter 150. This
administrative regulation establishes a permit for public use of
the Peabody Wildlife Management Area and places necessary
restrictions on its use by the public.

Section 1. Definitions. (1) "The area" means the Peabody
Wildlife Management Area.

(2) "Group" means a family, organization, or gathering using
the area for a specific event.

(3) "The Peabody Wildlife Management Area" means the lands
in Hopkins, Ohio, and Muhlenberg Counties owned or managed by
the Department of Fish and Wildlife Resources.

(4) "Permanent structure" means a blind, pit, stand, or other
structure left in place for more than twenty-four (24) hours.

Section 2. Permits Required. Except as
established provided in Sections 3 and 4 of this administrative
regulation, a person sixteen (16) years or older while on the area
shall:

VOLUME 48, NUMBER 12– JUNE 1, 2022

(1) Have in his or her possession a Peabody Wildlife Management Area user permit; or

(2) Be a member of a group with an event permit, either an individual event permit or annual event permit.

Section 3. Individual and Annual Event Permits. (1) In lieu of individual user permits, a person representing a group using the area shall have in possession an event permit and the area use permit as established in 301 KAR 3:010, Section 6.

(2) An event permit shall:

(a) Apply to each member of the group;

(b) Specify:

1. If it is an individual event permit, its period of validity, not to exceed four (4) days or, if it is an annual event permit, the dates the permit is not valid;

2. The activities in which the group will engage;

3. The name of the group; and

4. The name and address of an individual representing the group.

(3) The department may:

(a) Limit the number of event permits issued; or

(b) Assign a specific location for an event.

(4) The department shall:

(a) Deny the application for an event which would interfere with:

1. A management objective for the area; or

2. Other uses or users; or

(b) Revoke individual or event permits for violations of the terms of the application or this administrative regulation; and

(c) Not issue an event permit for an event at which wildlife is taken.

Section 4. Permit Exceptions. An individual or event permit shall not be required of a person:

(1) On official business and employed by or an agent of:

(a) Peabody Coal Company;

(b) Beaver Dam Coal Company;

(c) Peabody Holding Company; or

(d) The Kentucky Department of Fish and Wildlife Resources:

(2) En route through the area on a state or county road; or

(3) On the area:

(a) As a necessary part of his or her job; or

(b) For the protection of public safety or well-being.

Section 5. Permit Applications. (1) An applicant for an individual permit shall:

(a) Apply at an authorized license agent; and

(b) Pay the fee established[specified] in 301 KAR 3:022.

(2) An applicant for an event permit shall:

(a) Apply on the Peabody Wildlife Management Area and Starfire and Robinson Forest Wildlife Management Area Permit Application[a form provided by the department]; and

(b) Pay the fee established[specified] in 301 KAR 3:022.

(3) The department shall keep applications and copies of event permits issued in a retrievable form for a minimum of one (1) year after the permits expire.

Section 6. Prohibited Activities. While on the area, a person shall not:

(1) Swim for recreational purposes;

(2) Camp, except in a primitive fashion along an existing road;

(3) Leave a campfire unattended;

(4) Operate a motorized vehicle:

(a) Off an existing road; or

(b) Where prohibited by signs;

(5) Block a road or gate;

(6) Park, except in a designated parking area unless none are available;

(7) Park or camp within 100 feet of well heads;

(8) Target shoot, except at a designated area;

(9) Construct a permanent structure;

(10) Leave a temporary blind or stand in place overnight;

(11) Operate a boat:

(a) With a centerline exceeding eighteen (18) feet six (6) inches in length, except:

1. A canoe shall not have a length restriction; and

2. A pontoon boat shall not exceed twenty-two (22) feet in length[~~or~~]

(b) At greater than idle speed; or

(c) With an internal combustion engine on:

1. Goose Lake;

2. Island Lake; or

3. South Lake.

Section 7. Incorporation by Reference. (1) "Peabody Wildlife Management Area and Starfire and Robinson Forest Wildlife Management Area Permit Application," July 04, ~~2008~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, May 10, 2022)

301 KAR 4:110. Administration of drugs to wildlife.

RELATES TO: KRS 150.025

STATUTORY AUTHORITY: 2008 Ky. Acts ch.133, sec.5, 150.025(1)(h)

NECESSITY, FUNCTION, AND CONFORMITY: 2008 Ky. Acts ch.133, sec.5 requires[instructs] the department to promulgate administrative regulations that restrict a person from administering drugs to noncaptive wildlife. This administrative regulation prohibits the administration of drugs to wildlife and creates the necessary exceptions. ~~[-EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet.]~~

Section 1. Definitions. (1) "Captive wildlife":

(a) Means wildlife legally kept in confinement by fence or other structure or restraint intended to prevent escape; and

(b) Does not mean[include] fish.

(2) "Drug" means any chemical substance, other than food or mineral supplements, that affects the structure or biological function of any wildlife.

(3) "Noncaptive wildlife":

(a) Means wildlife not legally kept in confinement by fence or other structure or restraint intended to prevent escape; and

(b) Does not mean[include] fish.

Section 2. Administration of Drugs. Except as established[provided] in Section 4 of this administrative regulation, a person shall not administer drugs to noncaptive wildlife without written authorization from the commissioner pursuant to Section 3 of this administrative regulation.

Section 3. Petitions. (1) A party[Persons or entities] shall petition the commissioner in writing for authorization to administer drugs to noncaptive wildlife. Written petitions shall include:

(a) A biological or sociological justification for the need to administer a drug to noncaptive wildlife;

(b) A literature review of the known and potential effects of the drug on individual animals, the wildlife population, and potential consumers of wildlife; and

(c) A detailed plan and timeline for administration of the drugs[drug(s)].

(2) The commissioner may issue a waiver for the petition

requirement for authorization to administer drugs to noncaptive wildlife for specific situations involving:

- (a) Public safety; or
- (b) Wildlife disease outbreaks.

Section 4. Exemptions. This administrative regulation shall not apply to: (1) The administration of drugs to captive wildlife including captive cervids;

- (2) The treatment of sick or injured wildlife by:
 - (a) A licensed veterinarian;
 - (b) A holder of a wildlife rehabilitation permit; or
 - (c) A holder of a valid scientific collection permit;

(3) The administration of drugs by Commercial Nuisance Wildlife Control operators licensed by the department as established[set forth] in 301 KAR 3:120; or

(4) Employees of federal or state government in the performance of their official duties related to public health, wildlife management, or wildlife removal.

Section 5. Disposition of Wildlife. An officer of the department may take possession or dispose of any noncaptive wildlife if the officer has probable cause to believe the noncaptive wildlife have been administered drugs in violation of this administrative regulation.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, May 10, 2022)

702 KAR 3:090. Depository of board, collateral[bond, penal sum].

RELATES TO: KRS 156.010, 160.570

STATUTORY AUTHORITY: KRS 156.029(8)(7), 160.570

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(8)(7) requires the Board of Education to develop policies and to promulgate administrative regulations by which the Department of Education shall be governed. KRS 160.570(2) requires each local board of education's[education-] designated depository of funds to provide collateral[execute bond] for the faithful performance of its duties, which[and the bond] shall be approved by the local board and the Commissioner of Education. KRS 160.570(2) states that collateral shall be provided in accordance with KRS 41.240.[KRS 160.570(2) also defines the nature and qualifying sureties for the bond and requires the Kentucky Board of Education to regulate the penal sum of the bond.] This administrative regulation establishes the process for approval of collateral by the local board of education and the Commissioner of Education[standards for bonds of depository].

Section 1. (1) Before any board of education appoints a bank, trust company, or savings and loan association to serve as depository as required pursuant to KRS 160.570, the board shall.[A local board of education, on advice of the superintendent, shall determine the penal sum of the bond of depository at least thirty (30) days prior to the depository entering upon its duties and by July 1 of each fiscal year thereafter.]

(a) Require the depository to pledge collateral having an aggregate current face value or current quoted market value at least equal to the local board of education deposits as of the last business day of each quarter in which funds are so deposited, or provide to the local board a surety bond or surety bonds in favor of the local board of education in an amount at least equal to the local board of education deposits, as of the last business day of each quarter in which funds are deposited; provided, however, that amounts insured by the Federal Deposit Insurance

Corporation or the Federal Savings and Loan Insurance Corporation need not be so collateralized.

(b) As an alternative to subsection (1)(a), a depository insured by the Federal Deposit Insurance Corporation may either pledge to the local board, as collateral, securities or other obligations having an aggregate face value or a current quoted market value or provide to the local board a surety bond or surety bonds in an amount equal to eighty (80) percent of the value of the local board of education deposits including demand and time accounts, if the depository is determined by the State Investment Commission to have very strong credit with little or no credit risk at any maturity level and the likelihood of short-term unexpected problems of significance is minimal or not of a serious or long-term nature.

(2) The value of the local board of education deposit shall[will] be determined at the end of the business day of deposit and as of the end of business on the last day of each quarter that funds are so deposited.

Section 2. ~~[The district shall obtain approval for the bond of depository from the Commissioner of Education prior to the depository entering upon its duties.]~~ The local board shall[must] submit the affidavit of the depository to the Commissioner of Education for approval. The collateral[A depository bond] shall not be approved by the Commissioner of Education if the commissioner determines that the collateral[bond] is inadequate to insure the deposits of the local board of education[,-pursuant to the commissioner's authority in KRS 156.040].

Section 3. Incorporation by Reference.

(1) "Affidavit of Depository", is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Department of Education, Office of Finance and Operations, 300 Sower Building, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

~~[(1)(a) The penal sum of the depository bond shall be at least equal to either;~~

~~1. 103 percent of the current daily balances in each account as they may fluctuate throughout the life of the bond; or~~

~~2. The highest daily balance in each account each month for all accounts in the previous year.~~

~~(b) The penal sum of the depository bond shall be adjusted to reflect expected increases or decreases in the highest daily balances due to anticipated changes of deposit amounts in the current year.~~

~~(2)(a) The escrow agent for a depository choosing to use a collateral bond shall file safekeeping receipts with the local board of education as evidence of any collateral that has been pledged in accordance with the provisions of the bond executed by the depository institution.~~

~~(b) To reduce the penal sum of a collateral bond, the local board of education shall submit a notice, with reasons for the reduction, to the Commissioner of Education. A local board of education shall not permit a reduction of the collateral of a bond without execution of a new bond with prior approval of the Commissioner of Education.]~~

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
 Kentucky Board of Education
 Department of Education
 (As Amended at ARRS, May 10, 2022)

704 KAR 7:170. Corporal punishment.

RELATES TO: KRS 156.160, ~~[KRS]158.6451, [KRS 503.110, KRS]503.050, [KRS]503.070, 503.110~~

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.444
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070

~~authorizes[grants] the Kentucky Board of Education to manage[the management] and control [of]the common schools and all programs operated within those schools. KRS 156.160(1)(h) requires the Kentucky Board of Education to promulgate administrative regulations necessary or advisable for the protection of the physical welfare and safety of public school students. KRS 158.444 requires the Kentucky Board of Education to promulgate administrative regulations relating to school safety, student discipline, and related matters. This administrative regulation establishes the conditions under which corporal punishment may be used in public schools.~~

Section 1. Definitions. (1) "Corporal punishment" means the deliberate infliction of physical pain by any means upon the whole or any part of a student's body as a penalty or punishment for student misbehavior.[:]

(2) ~~["Qualified mental health professional" is][means the same as][defined by][in][KRS 202A.011(12),:]~~

~~[(3)] "Dangerous instrument" is[means the same as] defined by[in] KRS 500.080(3).[:]~~

~~[(3)][(4)] "Deadly weapon" is[means the same as] defined by[in] KRS 500.080(4).[:]~~

~~[(4)] "Evidence-based" is defined by 34 C.F.R. 77.1.~~

~~(5) "Physical injury" is[means the same as] defined by[in] KRS 500.080(13).[: and]~~

~~[(6)] "Qualified mental health professional" is defined by KRS 202A.011(12).~~

~~[(7)][(6)] "Serious physical injury" is[means the same as] defined by[in] KRS 500.080(15).~~

~~[(8)][(7)] "Trauma-informed approach" is defined by KRS 158.4416(1).~~

~~[(8)] "Evidence-based" is defined by 34 C.F.R.77.1.]~~

Section 2. ~~A[No] student with an Individual Education Program (IEP) pursuant to 707 KAR Chapter 1, 504 plan pursuant to Section 504 of the Rehabilitation Act of 1973, or identified as a homeless or foster care youth pursuant to 704 KAR 7:090 shall not be subjected to corporal punishment.~~

Section 3. (1) ~~Except for a local board of education that prohibits corporal punishment pursuant to Section 7(1)(a) of this administrative regulation,~~ within the first five (5) days of enrollment each school year, the school shall request written consent from the legal guardian of each student to use corporal punishment as a behavior intervention for their child. The written consent shall inform the legal guardian of how to access the student code of conduct, describe the code of conduct violations that may result in corporal punishment, and notify the legal guardian that consent may be withdrawn at any point during the school year. Absent valid written consent signed by the legal guardian, corporal punishment shall not be administered.

(2) Before administering corporal punishment to a pupil, the school shall contact the child's legal guardian to provide prior notification and receive affirmative verbal consent.

Section 4. ~~[Notwithstanding the provisions of KRS 503.070 and KRS 503.050,]~~Prior to administering corporal punishment to a pupil, the school shall attempt to remedy problematic behavior through the use of evidence-based practices consistent with a trauma-informed approach[other non-physical means].

Section 5. (1) Corporal punishment may only be administered

by the Principal or Assistant Principal. Corporal punishment shall only be administered in the presence of at least one (1) additional certified staff member who is the same gender as the student.

(2) Corporal punishment shall not be administered in a location where another student, staff member other than those described in subsection (1) of this section, or adult visitor to the school can see or hear the corporal punishment.

~~(3)[(2)] A[No] staff member shall not be compelled to administer or witness corporal punishment.~~

Section 6. (1) After administering corporal punishment, the school shall ensure that the student receives a minimum of thirty (30) minutes of counseling provided by the school's guidance counselor, school social worker, school psychologist, or other qualified mental health professional no later than the end of the next school day.

(2) Each incidence of corporal punishment ~~shall[must]~~ be recorded in the student information system. Schools shall report:

(a) The time and date ~~[which—]~~the punishment was administered;

(b) The name and position of the individual who administered the punishment;

(c) The names and positions of any witnesses to the punishment;

(d) The time and date of the prior consent required under Section 3 of this administrative regulation;

(e) The name and relationship of the individual providing consent under Section 3 of this administrative regulation;

(f) The behavioral interventions deployed prior to corporal punishment as required under Section 4 of this administrative regulation; and

(g) The time and date of the student counseling appointment required under Section 5 of this administrative regulation.

Section 7. (1) Each local board of education shall adopt a policy that either:

- (a) Prohibits the use of corporal punishment in the district; or
- (b) Allows the use of corporal punishment in the district.

(2) If the local board of education adopts a policy allowing the use of corporal punishment, its policy shall:

(a) Define the circumstances under which corporal punishment may be deployed which shall not exceed the justification included in KRS 503.110;

(b) Define the procedures for deploying corporal[such] punishment;

(c) Define the tool or instrument to be used when administering corporal punishment and include a prohibition on the use of dangerous instruments or deadly weapons;

(d) Define the limits on corporal punishment and ensure[ensures] that corporal punishment ~~shall[does]~~ not result in physical injury or serious physical injury; and

(e) Define the procedures for documenting and reporting corporal[such] punishment.

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
 Kentucky Board of Education
 Department of Education
 (As Amended at ARRS, May 10, 2022)

704 KAR 19:002. Alternative education programs.

RELATES TO: KRS 156.070, 156.160, 160.380

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 ~~authorizes[grants] the Kentucky Board of Education to manage[the authority over the management] and control the[of] programs operated in the common schools. KRS 156.160 grants~~

the Kentucky Board of Education the specific authority to promulgate administrative regulations establishing standards which school districts shall meet in program service to students. This administrative regulation establishes minimum requirements for the operation of alternative education programs in school districts.

Section 1. Definitions. (1) **"A1 school" is defined by 703 KAR 5:240.**

(2) "Alternative education program" is defined by KRS 160.380(1)(b)~~[(a)].~~

(3)~~[(2)]~~ "Child with a disability" means a child evaluated in accordance with 707 KAR 1:300, as meeting the criteria listed in the definitions in 707 KAR 1:002 for autism, deaf-blindness, developmental delay, emotional-behavior disability, hearing impairment, mental disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment which has an adverse effect on the child's educational performance and who, as a result, needs special education and related services.

(4) "Education record" is defined by [means the same as] 20 U.S.C. 1232g.

(5) ["Long term placement" means a student enrolled in an alternative education program for more than ten school days.

(6)~~[(3)]~~ "Individual education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 707 KAR 1:320.

(6)~~[(7)]~~**(4)** "Individual learning plan" or "ILP" means a comprehensive framework for advising students in grades ~~6~~**(6)** through ~~12~~**(12)** to engage in coursework and activities that will best prepare them to both realize college and career success and become contributing members of their communities.

(7)~~[(9)]~~**(5)** "Individual learning plan addendum" or "ILPA" means an action plan that addresses the changed educational needs of a student based upon entry into or exit from an alternative education program that includes~~[-as appropriate,-]~~ academic and behavioral needs of the student, criteria for the student's re-entry into the traditional program, and provisions for regular review of the student's progress throughout the school year while in an alternative education program.

(8)~~[(9)]~~**(6)** "Involuntary placement" means the placement of a student in an alternative education program by local district school personnel:

- (a)1. To ensure the safety of the individual student, the student body, or staff;
- 2. To meet the educational needs of the student;
- 3. To transition the student to a placement as a state agency child pursuant to KRS 158.135 and 505 KAR 1:080; or
- 4. For disciplinary purposes; and

(b) Not made at the request of the parent or emancipated student.

(9) "Long term placement" means a student enrolled in an alternative education program for more than ten (10) school days.

[(7) "A1 school" is defined by 703 KAR 5:240(1)(1).]

(10)~~[(8)]~~ "Off-site program" means an alternative education program located in a separate and dedicated program facility not located within ~~[the student's assigned school]~~**an existing A1 school.**

(11)~~[(9)]~~**(8)** "On-site program" means an alternative education program located within ~~[the student's assigned school]~~**an existing A1 school.**

(12)~~[(10)]~~**(9)** "Voluntary placement" means the placement of a student in an alternative education program at the request of the parent or emancipated student and with the agreement of school personnel to better meet the educational needs of the student.

(11) "Long term placement" means a student enrolled in an alternative education program for more than ten school days.]

Section 2. General Requirements. (1)(a) A district shall ensure that each alternative education program is not limited in scope or design and is aligned to the academic program of the district.[-

- 1. Aligns with college and career readiness outcomes;

2. Is not limited in scope or design; and

3. Includes training to build capacity of staff and administrators to deliver high quality services and programming that conform with best practices and guide all students to college and career readiness.[-]

(b) A student enrolled in an alternative education program may be eligible to participate in one (1) or more types of programs to address student learning needs that may include an alternative digital learning environment, credit recovery, or an innovative path to graduation.

(2) Each local board of education shall adopt and annually review policies and procedures for the operation of each alternative education program within the district. Locally-adopted policies and procedures shall include the:

(a) Purpose of the program, including the ways the program supports the district's college and career readiness goals for students;

(b) Eligibility criteria, as appropriate;

(c) Process for entering students into the program;

(d) Process for transitioning students out of the program;

(e) Process for developing the ILPA for students with long term placements, including the composition of the team to develop the ILPA, which shall include an invitation to the [parents]guardian to participate and, as appropriate, an invitation to the student to participate.[-and]

(f) Procedures for collaboration with outside agencies involved with involuntary placements, including courts or other social service agencies to address student transitions between programs.[-]

(g) Procedures for regular, periodic monitoring of the alternative education program by the district; and

(h) Procedures for selecting, implementing, and monitoring the impact of professional learning designed to meet the needs of the teachers and students served by the alternative education program.

(3) An alternative education program shall be either an on-site program or an off-site program.

(4) Alternative education program curriculum shall be aligned with the Kentucky ~~[Core-]~~Academic Standards established in 704 KAR 3:303 and 704 KAR Chapter 8, and the student learning goals in the ILP.

(5) Each alternative education program student shall be subject to the minimum graduation requirements established in 704 KAR 3:305 and any additional local district graduation requirements.

(6) An alternative education program shall be subject to any applicable requirements of Kentucky's Consolidated State Plan~~[703 KAR 5:225 and Kentucky's Elementary and Secondary Education Act Flexibility Waiver]~~, or its successor.

(7) Each student participating in an alternative education program shall be eligible to access extracurricular activities as allowed by local district and school council policies and by 702 KAR 7:065 or other applicable organization rules.

(8) Each student participating in an alternative education program shall continue to be able to access resources and services already available in the district, including instructional materials, tutoring, intervention, transportation, library and media services, specialty course work, and counseling services, in furtherance of each student's educational program as determined through the development of the ILPA.

Section 3. Placement of Students. (1)(a) The placement of students by the district in an alternative education program shall be either voluntary or involuntary.

(b) A student entering an alternative education program shall meet the eligibility requirements for the program established by the local board pursuant to Section 2 of this administrative regulation.

(c) The district shall ensure that an ILP, as required by 704 KAR 3:305, exists prior to placement of a student in an alternative education program.

(2)(a) The placement decision for all students with an IEP shall be made through the admissions and release committee (ARC) process pursuant to 707 KAR 1:320.

(b) For a child with a disability, the IEP shall address the statewide educational delivery needs of the student based upon entry into or exit from an alternative education program.

(c) The placement decisions for a student who has been identified under 29 U.S.C. §794, Section 504 of the Rehabilitation Act of 1973, as amended, shall be made through a team process consistent with the applicable requirements outlined in 34 C.F.R. Part 104.

Section 4. Costs and Expenditures. Each district shall use the statewide financial management system and chart of accounts to track costs and expenditures associated with each alternative education program operating in the district.

Section 5. Data. (1) Each district shall utilize the student information system to enter data regarding each student enrolled in an alternative education program.

(2) Data collected shall include demographic, programmatic, or other data fields contained in the student information system or required by the department to track and report student participation, educational programming, achievement, and transition to and from alternative education programs.

(3) Districts ~~[are] shall be responsible for ensuring that [student] education records are maintained and recorded in the student information system for each student in an alternative education program [regardless of whether services are provided by district staff or non-district staff].~~

Section 6. Personnel. Alternative education program teachers and administrators shall be subject to the teacher certification requirements established in KRS 161.020. ~~School districts [and] shall comply with the classified and certified assignment restrictions established in KRS 160.380(3) when operating alternative education programs.~~

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LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, May 10, 2022)

803 KAR 1:006. Employer-employee relationship.

RELATES TO: KRS Chapter 337
STATUTORY AUTHORITY: KRS 337.295
NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to promulgate regulations. The function of this administrative regulation is to define what constitutes an employer-employee relationship.

Section 1. Definitions. (1) "Employee" is defined by KRS 337.010(1)(e) and (2)(a).

(2) "Employer" is defined by KRS 337.010(1)(d).

Section 2. The Employer-Employee Relationship. (1) In order for KRS Chapter 337 to be applicable there must be an employer-employee relationship. An employer-employee relationship requires an employer, employee, and the act or condition of work.

(2) To determine whether an individual is an employee for purposes of an employer-employee relationship, the factors that shall be considered include:

- (a) The extent to which the services rendered are an integral part of the principal's business;
- (b) The permanency of the relationship;
- (c) The amount of the alleged contractor's investment in facilities and equipment;
- (d) An alleged contractor's opportunities for profit and loss;
- (e) The amount of initiative, judgement, or foresight in open market competition with others required for the success of the

claimed independent enterprise; and

(f) The nature and degree of control by the principal. The factors to be considered when determining control include:

1. Whether there are restrictive provisions in the agreement between the possible employer and possible employee which require the work be satisfactory to the possible employer and detailing how the work is to be performed;

2. Whether the possible employer has control over the business of the person performing work even though the possible employer does not control the particular circumstances of the work;

3. Whether an agreement is indefinite or for a long period of time;

4. Whether the possible employer may cancel the agreement at his or her discretion, and on how much notice;

5. Whether the possible employer may discharge employees of an alleged independent contractor;

6. Whether the work done by an alleged independent contractor is the same or similar to that done by admitted employees; and

7. The degree of independent business organization and operation.

(3) In addition to the factors in subsection (2)(f) of this section, if control cannot be firmly established, the following factors shall be considered when determining if an independent contractor is an employee:

(a) Whether the work done by the alleged independent contractor is listed on the payroll with the appropriate tax deductions;

(b) Whether the payments to the alleged independent contractor are charged to a labor and salary account or selling expense account;

(c) Whether the employees of the alleged independent contractor must be approved by the possible employer;

(d) Whether the possible employer keeps the books and prepares payroll for the possible employee;

(e) Whether the alleged independent contractor is assigned to a particular territory without freedom of movement outside thereof;

(f) Whether the alleged independent contractor has an independent economic or other interest in his or her work, other than increasing his or her own[or] pay;

(g) How[Whether] the respective tax returns of the parties list the remuneration paid; and

(h) Whether the possible employer has control over the manner in which the work is to be performed.

(4) The following factors shall be immaterial to the determination of whether an employer-employee relationship exists:

(a) The place where the work is performed;

(b) The absence of a formal employment agreement;

(c) Whether the state or local government grants a license to the alleged independent contractor;

(d) The measurement, method, or designation of compensation;

(e) The fact that no compensation is paid and the alleged independent contractor[employee] must rely entirely on tips, if other indications of employment are present; and

(f) Whether the alleged independent contractor[employee] is paid by the piece or by the job or on a percentage or commission basis.

Section 3. Work. The subject matter of the employer-employee relationship must be work or its equivalent. The essential elements of work are:

(1) Physical or mental exertion, whether burdensome or not;

(2) Controlled or required by the employer; and

(3) Pursued necessarily and primarily for the benefit of the employer and their business.

Section 4. Religious, Charitable and Nonprofit Organizations, Schools, Volunteer Workers, Members of Religious Orders. (1) Persons such as nuns, monks, lay brothers, deacons, and other members of religious orders who serve pursuant to their religious

obligations in the schools, hospitals, and other institutions operated by their church or religious order shall not be considered to be employees.

(2) Individuals who volunteer their services to religious, charitable and similar nonprofit organizations and schools not as employees or in contemplation of pay for the services rendered shall not be considered employees.

(3) Although the volunteer services described in subsection (2) of this section do not create an employer-employee relationship, the organizations for which they are performed may have employees performing compensated service whose employment is subject to KRS Chapter 337.

(a) In accordance with KRS Chapter 337, where an employer-employee relationship exists, employees shall not be paid less than statutory wages for hours worked in the workweek.

(b) There are circumstances where an employee may donate services as a volunteer and the time so spent shall not be compensable work.

(c) An employer-employee relationship shall not exist with respect to the volunteer time between the organization and the volunteer or between the volunteer and the person for whose benefit the service is performed.

(4) As part of an overall education program, public or private schools and institutions of higher learning may permit or require students to engage in activities conducted primarily for the benefit of the participants as a part of the educational opportunities provided to the students by the school or institution. These activities do not result in an employer-employee relationship between the student and the school or institution. The fact that a student may receive a minimal payment or stipend for participation in the activities shall not create an employer-employee relationship.

(5)(a) Tasks performed as a normal part of a program of treatment, rehabilitation, or vocational training shall not be considered as work of a kind requiring a hospital patient, school student, or institutional inmate to be considered an employee of the hospital, school, or institution.

(b) Initial participation by a student with disabilities in a school-work program or sheltered workshop program shall not constitute an employer-employee relationship if the following conditions are met:

1. The activities are educational, are conducted primarily for the benefit of the participants, and comprise one of the facets of the educational opportunities provided to the individuals. The individual may receive some payment for his or her work in order to have a more realistic work situation, or as an incentive to the individual or to ensure that the employer will treat the individual as a worker;

2. The time in attendance at the school plus the time in attendance at the experience station, either in the school or with an outside employer, does not substantially exceed time the individual would be required to attend school if following a normal academic schedule. Time in excess of one (1) hour beyond the normal school schedule or attendance at the experience station on days when school is not in session shall be considered substantial; and

3. The individual does not displace a regular employee or impair the employment opportunities of others by performing work which would otherwise be performed by regular employees who would be employed by the school or an outside employer.

Section 5. Outside Work or Homework Performed by Independent Contractor. (1) A homemaker is an employee, even though there may be a buying and selling arrangement between the parties.

(2) If the employer asserts outside work or homework is performed by independent contractors, the following factors shall be considered in determining whether employee-employer relationship exists:

(a) Whether the employer has the right to control the manner of the performance of the work or the time in which the work is to be done;

(b) Whether the employer pays taxes for Social Security, unemployment, or workers' compensation insurance;

(c) Whether the homemaker ever collected any benefits such

as unemployment or workers' compensation, because of unemployment by the employer;

(d) Whether the employer furnishes the material or finances directly or indirectly the purchase of the material which the homemaker uses;

(e) When the practice of buying and selling between the employer and the homemaker began, and what ~~[are]~~ the mechanics of the transaction are;

(f) Whether the homemaker bills the employer for the work done;

(g) Whether bills of sale are prepared;

(h) Whether sales taxes are paid, or are state or local exemptions obtained because of retail purposes;

(i) Whether payments are made in cash or by check;

(j) How the homemaker profits under the buying-selling arrangement compared with wages as a homemaker;

(k) Whom the homemaker considers to be the employer;

(l) Whether the homemaker has a license to do business; and

(m) The equipment used, what its value is, and who furnishes it.

Section 6. Trainees and Student-trainees. Whether trainees or students are employees under KRS Chapter 337, depends upon all circumstances of their activities on the premises of the employer. If all the following criteria apply, the trainees or students shall not be employees under KRS Chapter 337:

(1) The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;

(2) The training is for the benefit of the trainees or students;

(3) The trainees or students do not displace regular employees, but work under their close observation;

(4) The employer that provides the training derives no immediate advantage from the activities of the trainees or students and on occasion operations may actually be impeded;

(5) The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and

(6) The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

Section 7. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on May 10, 2022.

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**LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, May 10, 2022)**

803 KAR 1:026. Equal pay provisions, meaning and application.

RELATES TO: KRS 337.420-337.433

STATUTORY AUTHORITY: KRS 337.420(3), 337.425(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.425 authorizes the Commissioner of the Department of Workplace Standards to promulgate[issue] administrative regulations necessary or appropriate to carry out the provisions of KRS 337.420 to 337.433. ~~[The function of]~~ This administrative regulation establishes requirements relating to[is to provide guidance with respect to the meaning and] application of the equal pay provisions set forth in KRS 337.420 to 337.433.

Section 1. Definitions. (1) "Employer" is defined by KRS 337.420(2).

(2) "Establishment" means a distinct physical place of business that is[. Each] physically separate from other

~~places[place] of business[is considered a separate establishment].~~

~~(3) "Wage rate" is defined by KRS 337.420(3) [and includes all payments made to or on behalf of the employee as remuneration for employment. This includes fringe benefits such as vacation and holiday pay, premium payments for work on Saturdays, Sundays, holidays, regular days of rest, pension benefits, insurance benefits, and other fringe benefits paid as compensation for employment. Payments made by an employer to an employee which do not constitute compensation for employment, such as payments related to maternity and reasonable payments for reimbursable expenses of traveling on the employer's business, are not wages to be compared for equal pay purposes].~~

Section 2. Application of Provisions in General.

(1) Application to employers. The prohibition against discrimination in wages on the basis of sex contained in KRS 337.423 shall apply[applies] to every employer within the state.

(2) Application to establishments.

(a) The prohibition against discrimination in wages on the basis of sex shall apply[applies] within the same establishment.

(b) If[Where] an employer has more than one (1) establishment in which he or she employs employees, there shall not be any[no] comparison between wages paid to employees in different establishments.

(3) A wage rate shall encompass all payments made to or on behalf of the employee as remuneration for employment, including fringe benefits, such as:

(a)1. Vacation and holiday pay;

2. Premium payments for work on Saturdays, Sundays, holidays, or regular days of rest; and

3. Pension benefits, insurance benefits, and other fringe benefits paid as compensation for employment.

(b) Payments made by an employer to an employee that do not constitute compensation for employment, such as payments related to maternity and reasonable payments for reimbursable expenses of traveling on the employer's business, shall not constitute wages to be compared for equal pay purposes.

Section 3. Male Jobs and Female Jobs. (1) If[Where] an employee of one (1) sex is hired or assigned to a particular job to replace an employee of the opposite sex, comparison of the newly assigned employee's wage rate with that of the replaced former employee shall be[is] required, whether or not the job is performed concurrently by employees of both sexes.

(2) A prohibited sex-based wage differential shall exist[occurs] if all employees of one (1) sex are removed from a particular job by transfer or discharge so as to retain employees of only one (1) sex in a job previously performed interchangeably or concurrently by employees of both sexes.

(a) The employer's obligation to pay the higher rate for the job shall not[cannot] be avoided or evaded by confining the job to members of the lower paid sex.

(b) The employer shall increase[Compliance with the law can be achieved only by increasing] the wage rate to the higher rate paid for the job when performed by employees of the opposite sex.

Section 4. Inequalities in Pay. (1) Inequalities in pay between employees of the opposite sexes that[which] may be a violation of KRS 337.423 shall include the following situations:

(a) [Where an inequality, allegedly based on a difference in job content, is in fact one on which:]The employee;

1. Occupies a[occupying the] job that purportedly requires a[requiring the] higher degree of skill, effort, or responsibility; and

2. Receives the lower wage rate;

(b) [Where:]Employees of only one (1) sex are concentrated in the lower grades of the wage scale, and there is no material relationship other than sex between the lower wage rates paid to the employees and the higher rates paid to employees of the opposite sex; or

(c) 1. [If in-]A particular establishment tends to pay for the same work:

a. All persons of one (1) sex [tend to be paid] at the lowest rate of the range; and

b. Employees of the opposite sex [hired to perform the same work tend to be paid]at the highest rate of the range;]; and

2. No specific factor or factors other than sex are associated with the difference in pay.

(2) Differentials in entrance rates shall not constitute a violation of KRS 337.423 if the factors taken into consideration in determining which rate is to be paid each employee are applied equally to men and women.

Section 5. Equality and Inequality of Pay in Particular Situations. (1) Overtime work. Overtime premiums shall be[are] a part of wages for purposes of KRS 337.423.

(a) It shall[is] not be a prohibited wage rate differential if[deferential where].

1. Male and female employees perform comparable work during regular hours, but;

a. Employees of only one (1) sex [only-]continue working overtime into another work period; and

b. Work performed during this later period is compensated at a higher rate, if it[where such] is required by law or is the customary practice of the employer; or

2. Male and female employees are performing equal work in an establishment during regular hours, but;

a. Only some of these employees continue working into an overtime period;]; and

b. Payment of a higher wage rate is paid for the overtime, if[so long as] employees, whether male or female, are paid for the actual overtime hours worked.

(b) A prohibited wage rate differential shall occur if[deferential occurs where] men and women receive the same straight-time rates for work subject to the equal pay standards, but;

1. Employees of one (1) sex receive an overtime premium rate of twice the straight-time rate; and[while]

2. Employees of the opposite sex receive only one and one-half (1 1/2) times the straight-time rate for overtime.

(2) Special assignments. If an employee is required to perform an additional task outside regular working hours, it shall not justify payment of a higher wage rate to that employee for all hours worked. Employees who are assigned a different and unrelated task to be performed outside the regular workday may be paid at a different rate of pay for the time spent in performing this[such] additional duty if[provided] the rate is commensurate with the task performed.

(3) Vacation or holiday pay. Vacation or holiday pay shall[is deemed to] be considered as remuneration for employment included in wages [within the meaning of the law]. A wage rate differential shall occur if[occurs when].

(a) Employees of one (1) sex receive vacation pay for a greater number of hours than employees of the opposite sex;

(b) The work is subject to KRS 337.423; and

(c) There is no specified exception to the wage rate differential pursuant to KRS 337. 423(1).

(4) Contributions to employee benefit plans.

(a) If employer contributions to a plan providing insurance or similar benefits to employees are equal for both men and women, a[no] wage differential prohibited by KRS 337.423 shall not[will] result from these[such] payments, even though the benefits that[which] accrue to the employees [in question-]are greater for one (1) sex than for the other.

(b) The fact that an employer making unequal contributions for employees of opposite sexes in the[this] situation described in paragraph (a) of this subsection shall[will] not be considered a wage rate differential prohibited by KRS 337.423, if the resulting benefits are equal for the employees.

(5) Commissions. The establishment of different rates of commission for different types of merchandise shall[is] not be a violation of the equal pay provisions if[where] the factor of sex provides no part of the basis for the differential.

(6) Head of household. Head of household status shall not

~~bear any/bears no~~ relationship to the requirements of the job or to an employee's performance on the job. If a differential in pay exists because an employee of one (1) sex is head of a household and the other employee of the opposite sex is not, the differential shall be considered to be/is based on the factor of sex.

Section 6. The Equal Pay for Equal Work Standard; Generally.
(1) In accordance with KRS 337.423, an employer shall be/is prohibited from paying employees of one (1) sex wages at rates lower than employees of the opposite sex for comparable work on jobs with comparable skills, efforts, and responsibilities required for performance. Application of the equal pay standard:

(a) Shall/is not be dependent on job classifications or titles.

(b) Shall be dependent~~[but rather]~~ on actual job requirements and performance.

(2) In accordance with KRS 337.423, jobs with comparable requirements shall be compared in applying the equal pay for equal work standard.

(a) Jobs that require comparable skill, effort, and responsibility in their performance shall/may not be required to be identical in every respect. Jobs shall be scrutinized as a whole and over a full work cycle.

(b) Inconsequential differences in job content shall not be a valid excuse for payment of a lower wage to an employee of one (1) sex than to an employee of the opposite sex, if the two (2) employees are performing comparable work on essentially the same jobs in the same establishment.

(c) In determining whether job differences are so substantial as to make jobs unequal, whether and to what extent significance has been given to these/such differences in setting the wage levels for the jobs shall be considered.

(d) In determining whether differences in job content are substantial in order to establish whether or not employees are performing comparable work, the amounts of time that/which employees spend in the performance of different duties shall not be the sole criteria.

(3) In order for the equal pay standard to apply, an analysis of the following shall be conducted:

(a) Comparable skill in performance.

1. Skill shall:

Include/Includes factors, such as experience, training, education, and ability; and

be ~~[it shall]~~ Be measured in terms of the performance requirements of the job.

2. If employees are required to have the same skill in order to perform either of two (2) jobs, the jobs shall require comparable skill, even if/though the employee in one (1) of the jobs does/may not exercise the required skill as frequently or during as much of the/his or her working time as the employee in the other job. Possession of a skill not needed to meet requirements of the job shall not be considered in making a determination regarding comparability of skill.

3. The efficiency of the employee's performance in the job shall not be considered in evaluating skill; and

(b) Comparable effort in performance.

1. Effort requires measurement of the physical or mental exertion needed for the performance of a job.

2. Jobs may require comparable effort in their performance even though the effort may be exerted in different ways on the two (2) jobs. Differences only in the kind of effort required to be expended in this/such-a situation shall not justify wage differentials.

3. The occasional or sporadic performance of an activity that/which may require extra physical or mental exertion shall/is not alone be sufficient to justify a finding of unequal effort.

4. A wage rate differential based on differences in the degree or amount of effort required for performance of jobs shall be applied uniformly to men and women; and

(c) Comparable responsibility.

1. Responsibility shall be/is the degree of accountability required in the performance of the job, with emphasis on the importance of the job obligation. Differences in the degree of responsibility required in the performance of otherwise comparable

jobs shall cover a wide variety of situations.

2. If one (1) employee of a group performing jobs that/which are comparable in other respects, is required from time to time to assume supervisory duties for reasons such as the absence of the regular supervisor, payment of a higher rate to the employee may/might be based on the additional responsibility required to perform the job.

Section 7. Exceptions to Equal Pay Standards. (1) In accordance with KRS 337.423(1), the following differentials shall be/ provides two (2)] exceptions to the standard requiring that employees doing comparable work be paid equal wages, regardless of sex, Differentials paid pursuant to an established:

(a) ~~[Differentials paid pursuant to an established]~~ Seniority system; or

(b) ~~[Differentials paid pursuant to established]~~ Merit increase system.

(2) If an employer relies on the excepting language to exempt a differential in pay from the operation of the equal pay provisions, the employer shall be required/able to demonstrate that the wage rate differential is based on a factor other than sex if/where it appears that the payments are for jobs requiring comparable skill, effort, and responsibility.

(3) A showing that a wage differential is based on a factor other than sex, so as to be exempt from the KRS 337.423, shall/may be incomplete without a showing that there is a reasonable relationship between the amount of the differential and the weight properly attributable to the factor other than sex. ~~[To illustrate,]~~ If male employees who work forty (40) hours each week and female employees who work thirty-five (35) hours each week are performing comparable work on jobs; and the job performance ~~[of which]~~ requires comparable skill, effort, and responsibility; and the employees/they are paid weekly salaries for this work, a differential in the amounts may/could be justified ~~[as]~~ based on a difference in hours of work. ~~[However,]~~ If the difference in salaries paid is too great to be accounted for by the difference in hours of work, then it shall be necessary to show some ~~[other]~~ factor, other than sex, as the basis for the unexplained portion of the wage differential.

(4) Application of exceptions ~~[illustrated]~~.

(a) ~~[When applied without distinction to employees of both sexes,]~~ Shift differentials, incentive payments, production bonuses, performance and longevity raises, and similar payments shall/the like will not result in equal pay violations if applied without distinction to employees of both sexes.

(b) "Red circle" rates. The term "red circle" rate shall mean/rates describes certain unusual, higher than normal wage rates that/which are maintained for various reasons.

1. If/The use of a "red circle" rate may arise in a situation where an employer wishes to transfer a long-service employee, who can no longer perform their regular job because of ill health, to different work that/which is now being performed by employees of the opposite sex, this may result in a red circle rate. Under the "red circle" principle, the employer may continue to pay the employee his or her present salary, which is greater than that paid to the employees of the opposite sex, for the work both will be doing. Maintaining an employee's established wage rate despite a reassignment to a less demanding job shall be/is a valid reason for the differential, even if/though other employees performing the less demanding work would be paid at a lower rate because/ since the differential is based on a factor other than sex.

2. If/Where wage rate differentials have been or are being paid on the basis of sex to employees performing comparable work, rates of the higher paid employees shall not be "red circled" in order to comply with the statute.

(c) Temporary reassignments.

1. An employer may require an employee, for a short period, to perform the work of a job classification other than the employee's regular classification. If the employee's rate for the regular job is higher than the rate usually paid for the work to which the employee is temporarily reassigned, the employer may continue to pay the employee the higher rate; and

2. An employee may be required, during the period of

temporary reassignment, to perform work for which employees of the opposite sex are paid a higher wage rate than that paid for the duties of the employee's regular job classification. The employer may continue to pay the reassigned employee at the lower rate, if the rate is not based on quality or quantity of production, and if the reassignment is ~~[in fact a temporary one]~~.

3. If a piece rate is paid to employees of the opposite sex who perform the work to which the ~~employee/employer~~ in question is reassigned, failure to pay that employee the same piece rate paid to the other employees ~~shall constitute discrimination/would discriminate~~ on the basis of sex.

4. Failure to pay the higher rate to the reassigned employee after it becomes known that the reassignment will not be ~~[of a temporary shall be nature is]~~ an indication that sex, rather than the temporary nature of the assignment, is the real basis for the wage differential. Failure to pay the higher rate for a period longer than one (1) month ~~shall/will~~ raise questions as to whether the reassignment was, in fact, intended to be ~~[a temporary one]~~.

(d) Training programs. Employees employed under a bona fide training program may, in the furtherance of their training, be assigned from time to time to various types of work in the establishment. The employee in training status may be performing comparable work with nontrainees of the opposite sex whose wage rates may be unequal to those of the trainee. ~~[If Provided]~~ the rate paid to the employee in training status is paid, regardless of sex, under the training program, the differential ~~may be considered/can be shown~~ to be attributable to a factor other than sex, and ~~a/no~~ violation of the equal pay standard ~~shall not/will~~ result.

(e) Temporary and part-time employees.

1. The payment of different wage rates to permanent employees, ~~as compared with/than to~~ temporary employees ~~that/such as~~ may be hired during the holiday season, ~~shall/would~~ not be a violation of the equal pay provisions, even ~~if/though~~ comparable work is performed by both groups of workers.

2. The payment of a different wage to employees who work only a few hours a day, ~~as compared with/than to~~ employees of the opposite sex who work a full day, ~~shall not be a violation of/will not necessarily involve noncompliance with~~ the equal pay provisions, even ~~if/though~~ both groups of workers are performing comparable work in the same establishment.

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LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, May 10, 2022)

803 KAR 1:061. Overtime pay requirements.

RELATES TO: KRS 337.285, 29 C.F.R. 778.110, 778.112, 778.113, 778.114, 778.116, 778.117 – 778.121, 778.215, 778.301, 778.302(a), (b)

STATUTORY AUTHORITY: KRS 337.285, 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.285 requires overtime pay standards. KRS 337.295 authorizes the commissioner to promulgate administrative regulations. This administrative regulation establishes ~~standards/the official interpretations~~ of the Department of Workplace Standards, Kentucky Labor Cabinet, with respect to ~~the meaning and application of the~~ overtime pay requirements established in KRS 337.285.

Section 1. Definitions. (1) "~~Profit-sharing/Profit sharing~~ plan" means any person or arrangement that provides for the distribution by the employer to the employees of ~~employees'/their~~ respective shares of profits.

(2) "~~Profit-sharing/Profit sharing~~ trust" means any program

or arrangement that provides for the irrevocable deposit by the employer of the employee's distributive shares of profits with a trustee for deferred distribution to the employees of ~~employees'/their~~ respective shares.

Section 2. Application of Overtime Provisions Generally. (1) Because there is not an absolute limitation in KRS 337.285 ~~regarding/on~~ the number of hours that an employee may work in any workweek, the employee may work as many hours a week as the employee and employer determined, if the required overtime compensation is paid to the employee for hours worked in excess of forty (40) hours as established in KRS 337.285.

(2) In accordance with KRS 337.285, an employer shall not be required to pay an employee overtime compensation for hours in excess of eight (8) per day or for work on Saturdays, Sundays, holidays, or regular days of rest.

(3) If more than forty (40) hours are not actually worked in the workweek, overtime compensation pursuant to KRS 337.285 need not be paid.

(4) KRS 337.285 shall not relieve an employer of an obligation the employer may have assumed by agreement or of any obligation imposed by other state or federal laws to limit overtime hours of work or to pay premium rates for work in excess of a daily standard or for work on Saturdays, Sundays, holidays, or other periods outside of or in excess of the normal or regular workweek or work day.

Section 3. The Workweek as the Basis for Applying KRS 337.285. If in any workweek KRS 337.285 applies and an employee or employer is not exempt from overtime pay requirements, the employer shall total all the hours worked by the employee in that workweek and pay overtime compensation for each hour worked in excess of forty (40) hours.

Section 4. Each Workweek Stands Alone. (1) In accordance with KRS 337.285, in a single workweek an employer shall not average hours over two (2) or more weeks. If an employee works thirty (30) hours one (1) week and fifty (50) hours the next, the employee shall receive overtime compensation for the overtime hours worked beyond the applicable maximum in the second week, even if the average number of hours worked in the two (2) weeks is forty (40).

(2) This section shall apply regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether the employee is paid on a daily, weekly, biweekly, monthly, or other basis.

(3) This section shall apply to pieceworkers and employees paid on a commission basis. For pieceworkers and commission workers, the hours worked and the compensation earned shall be determined on a workweek basis.

Section 5. Determining the Workweek. (1) An employee's workweek shall be based on a fixed and regularly recurring period of 168 hours, seven (7) consecutive twenty-four (24) hour periods, which need not coincide with the calendar week but may begin on any day and at any hour of the day.

(2) For purposes of computing pay in accordance with KRS 337.285, a single workweek may be established for a plant or other establishment as a whole or different workweeks may be established for different employees or groups of employees.

(3) Once the beginning time of an employee's workweek basis is established, it shall remain fixed regardless of the schedule of hours worked.

~~(a)~~ The beginning of the workweek may be changed if the change is intended to be static and not designed to evade overtime requirements.

~~(b)~~ The proper method of computing overtime pay in a period in which a change in the time of commencement of the workweek is made shall be accomplished as established in Section 13 of this administrative regulation.

Section 6. General Standard for Overtime Pay. The general overtime pay standard in KRS 337.285 requires that overtime shall

be compensated at a rate not less than one and one-half (1 1/2) times the hourly rate at which the employee is employed but shall not be less than the statutory minimum. If the employee's hourly rate of pay is higher than the statutory minimum, the overtime compensation shall be computed at a rate not less than one and one-half (1 1/2) times the higher rate.

Section 7. Overtime compensation shall be at an hourly rate in accordance with KRS 337.285, which is based on the rate per hour.

(1) An employer shall not be required to compensate employees on an hourly rate basis. Employee earnings may be determined on a piece-rate, salary, commission, or other basis, but the overtime compensation due to employees shall be computed on the basis of the hourly rate calculated based on earnings computed at the hourly rate of employees during each workweek.

(2) The hourly rate of pay of an employee shall be determined by dividing the total remuneration for employment in any workweek by the total number of hours worked by the employee in that workweek for which the compensation was paid.

Section 8. (1) Hour Rate Employee. Overtime pay criteria for hourly rate employees shall be/is as established in 29 C.F.R. 778.110.

(2) Pieceworker. If an employee is employed on a piece-rate basis, the hourly rate of pay shall be computed by adding together total earnings for the workweek from piece rate and all other sources and dividing that sum by the number of hours worked in the week for which compensation was paid. For the overtime work the pieceworker is entitled to be paid, in addition to the total weekly earnings at this hourly rate for all hours worked, a sum equivalent to one-half (1/2) this rate of pay multiplied by the number of hours worked in excess of forty (40) in the week.

(3) Day rates and job rates. The overtime pay criteria for day rates and job rates shall be/are as established in 29 C.F.R. 778.112.

(4) Salaried employee. The overtime pay criteria for salaried employees shall be/is as established in 29 C.F.R. 778.113 and 778.114.

(5) Employees working two (2) or more rates. If an employee in a single workweek works at two (2) or more different types of work for which different nonovertime rates of pay have been established, the hourly rate for that week shall be the weighted average of the rates. The total earnings shall be computed to include compensation during the workweek from all the rates and shall then be divided by the total number of hours worked at all jobs.

(6) Payments other than cash. The overtime pay criteria for payments other than cash shall be/are as established in 29 C.F.R. 778.116.

(7) Commission payments. The overtime pay criteria for commission payments shall be/is as established in 29 C.F.R. 778.117 through 778.121.

(8) Other methods of determining the regular hourly rate shall be allowed if the method:

(a) Provides[they provide] for each employee employed by an employer to be paid a rate of not less than one and one-half (1 1/2) times the hourly rate at which the employee is employed; and

(b)[the method] is not being used as an attempt to evade the provisions of KRS 337.285.

Section 9. Payments Excluded from Computing Hourly Rate. As used in KRS 337.285, the "hourly rate at which he is employed" shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include:

(1) Sums paid as gifts; [;] Payments in the nature of gifts made at holiday times or on other special occasions as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency. The sums shall not be credited toward overtime compensation due.

(a) To qualify for this exclusion, the bonus shall be actually a gift or in the nature of a gift.

(b) If it is measured by hours worked, production, or efficiency,

the payment shall be considered geared towards wages and hours during the bonus period and shall not be considered in the nature of a gift.

(c) If the payment is so substantial that the payment[is] can be assumed that employees consider it a part of the wages for which employees[they] work, the bonus shall not be considered to be in the nature of a gift.

(d) If the bonus is paid pursuant to contract, the bonus[is] shall not be in the nature of a gift;

(2)(a)1. Payments made for an occasional period during which time worked is not being performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; [;]

2. Reasonable payments for traveling expenses or other expenses incurred by an employee in the furtherance of the employer's interests and properly reimbursable by the employer; [;] and

3. Other similar payments to an employee that are not made as compensation for the employee's hours worked in any workweek; [;]

(b) No part of the payments shall be credited toward overtime compensation due pursuant to KRS 337.285;

(3) Sums paid in recognition of services performed during a given period if:

(a) Both the fact that payment is to be made and the amount of the payment shall be determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect the payments regularly; or

(b) The payments are made pursuant to a bona fide profit-sharing plan or trust or bona[bonda] fide thrift or savings plan.

1. The sums shall not [, however,] be credited toward overtime compensation due pursuant to KRS 337.285.

2. In order for a bonus to qualify for exclusion as a discretionary bonus, the employer shall retain discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid.

3. The sum to be paid as a bonus shall be determined by the employer without prior promise or agreement.

4. The employee shall not have a contract right, express or implied, to any amount.

5. If the employer promises in advance to pay a bonus, the employer shall have waived[abandoned] discretion with regard to it;

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for avoiding old-age, retirement, life, accident, [or,]health insurance, or similar benefits for employees. The sums shall not be credited toward overtime compensation pursuant to KRS 337.285;

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because the hours are hours worked in excess of eight (8) in a day or in excess of the maximum workweek applicable to the employee's normal working hours. Extra compensation paid for these hours shall be creditable toward overtime compensation pursuant to KRS 337.285;

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, regular days of rest, or in the sixth or seventh day of the workweek, in which the premium rate is not less than one and one-half (1 1/2) times the rate established in good faith for like work performed in nonovertime hours on other days. Extra compensation paid for these shall be creditable toward overtime compensation pursuant to KRS 337.285; or

(7) Extra compensation provided by a premium rate period to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday, in which the premium rate is not less than one and one-half (1 1/2) times the rate established in good faith by the contract or agreement for similar work performed during the workday or workweek. Extra compensation paid for these hours shall be creditable toward overtime compensation

pursuant to KRS 337.285.

Section 10. Requirements of A ~~[""]~~bona fide "Profit-sharing Plan or Trust." (1) A bona fide profit-sharing plan or trust shall comply with paragraphs (a) through (f) of this subsection.

(a) The profit-sharing plan or trust shall constitute a definite program or arrangement in writing, communicated or made available to the employees, which shall be established and maintained in good faith for the purpose of distributing to the employees a share of profits as additional remuneration over and above the wages or salaries paid to employees, which wages or salaries shall not be dependent upon or influenced by the existence of the profit-sharing plan or trust or the amount of the payments made pursuant thereto.

(b) All contributions or allocations by the employer in the fund to be distributed to the employees shall be:

1. Derived solely from profits of the employer's business as a whole~~[""]~~ or an established branch or division of the business~~[" which-is"]~~ recognized for general business purposes and for which profits shall be separately and regularly calculated in accordance with accepted accounting practice; and

2. Made periodically, but not more frequently than is customary or consonant with accepted accounting practice to make periodic determinations of profit.

(c) Eligibility to share in profits shall extend to at least all employees who are subject to the minimum wage and overtime provisions of KRS 337.285, or to all employees in an established part of the employer's business as established in paragraph (b) of this subsection if eligibility can be determined factors such as length of service or minimum schedule of hours or days of work, which are established in the plan or trust and that eligibility need not extend to officers of the employer.

(d) The amounts paid to individual employees shall be determined in accordance with a definite formula or method of calculation established in the plan or trust. The formula or method of calculation shall be based on factors such as straight-time earnings, total earnings, base rate of pay of the employee, straight-time hours or total hours worked by employers, length of service, or distribution on a per capita basis.

(e) An employee's total share determined in accordance with paragraph (d) of this subsection shall not be diminished because of any other remuneration received by the employee.

(f) Provision shall be made either for payment to the individual employees of ~~employees["their"]~~ respective shares of profits after the determination of the amount of profits to be distributed, or for the irrevocable deposit by the employer of the employee's distributive shares of profits with a trustee for deferred distribution to the employees of ~~employees["their"]~~ respective shares after a stated period of time or upon the occurrence of appropriate contingencies established in the plan or trust. The right of an employee to receive his or her share shall not be dependent upon continuing in the employ of the employer after the period for which the determination of profits has been made.

(2) A plan or trust that contains any of the following provisions shall not be deemed to meet the requirements of a bona fide profit-sharing or trust:

(a) The share of any individual employee is determined in substance on the basis of attendance, quality or quantity of work, rate of production, or efficiency~~[""]~~;

(b) The amount to be paid periodically by the employer into the fund or trust to be distributed to the employees is a fixed sum;

(c) Periodic payments of minimum amounts to the employees are guaranteed by the employer; or

(d) Any individual employee's share, by the terms of the plan or trust to be distributed to the employees ~~shall be[are]~~ based on factors other than profits, such as hours of work, production, efficiency, sales, or savings in cost.

Section 11. Requirements of A ~~[""]~~bona fide Thrift or Savings Plan.~~[""]~~ (1) A bona fide thrift or savings plan shall meet all of the standards established in paragraphs (a) through (e) of this subsection.

(a) The thrift or savings plan shall constitute a definite program

or arrangement if ~~the plan["it"]~~ is in writing~~["it"]~~ adopted by the employer or by contract as a result of collective bargaining and communicated, or made available to the employees~~["it"]~~ and established and maintained, in good faith~~["it"]~~ for the purpose of encouraging voluntary thrift or savings by employees by providing an incentive to employees to accumulate regularly and retain cash savings through the regular purchase of public or private securities.

(b) The plan shall establish the category or categories of employees participating and the basis of ~~the employee's["their"]~~ eligibility. Eligibility shall not be based on factors such as work, production, or efficiency of the employees. Hours of work may be used to determine eligibility of part-time or casual employees.

(c) The amount any employee could save under the plan shall be stated in the plan or determined in accordance with a definite formula established in the plan. The formula shall be based on factors such as the straight-time earnings or total earnings, ~~base[case]~~ rate of pay, or length of service of the employee.

(d) ~~1.~~ The employer's total contribution in any year shall not exceed fifteen (15) percent of the participating employees' total earnings during the year; ~~and["it"]~~

~~2. [In-addition,--]~~The employer's total contribution in any year shall not exceed the total amount saved or invested by the participating employees during that year.

(e) The employer's contributions shall be apportioned among the individual employees in accordance with a definite formula or method of calculation established in the plan. The formula or method of calculation shall be based on the amount saved or length of time the individual employee retains savings or investment in the plan if the employee's share is not determined because of any other remuneration received by the employee.

(2) An employee's participation shall be on a voluntary basis.

(3) An employee's wages or salary shall not be dependent upon or influenced by the existence of the thrift or savings plan or the employer's contributions to the plan.

(4) The amounts any employee may save under the plan, or the amounts paid by the employer under the plan shall not be based upon the employee's hours of work, production, or efficiency.

Section 12. Conditions for Exclusion of Benefit-plan Contributions under Section 9(4) of this Administrative Regulation. The criteria for the exclusion of benefit-plan contributions under Section 8(4) of this administrative regulation ~~shall be[are]~~ as established in 29 C.F.R. 778.215.

Section 13. Overlapping ~~if[When]~~ Change of Workweek is Made. (1) As established in Section 5 of this administrative regulation, the beginning of the workweek may be changed for an employee or for a group of employees if the change is intended to be permanent and is not designed to evade the overtime requirements of KRS 337.285.

(a) A change in the workweek necessarily results in a situation in which one (1) or more hours or days fall in both the old workweek as previously constituted and the new workweek.

(b) If the workweek in a plant commenced at 7 a.m. on Monday and it is now proposed to being the workweek at 7 a.m. on Sunday, the hours worked from 7 a.m. Sunday to 7 a.m. Monday shall constitute both the last hours of the old workweek and the first hours of the newly established workweek.

(2) The criteria for the computation of overtime due for overlapping workweeks ~~shall be[is]~~ as established in 29 C.F.R. 778.301 and 778.302(a) and (b).

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LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, May 10, 2022)

803 KAR 1:064. Trading time.

RELATES TO: KRS 337.275, 337.285, 45 U.S.C. 181
STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to promulgate[issue] administrative regulations for special items usual in a particular employer-employee relationship. ~~[The function of]~~ This administrative regulation establishes[is to define] the criteria to be met by public employers who wish to allow[permit] employees engaged in fire protection activities and any employee of a carrier by air subject to the provisions of 45 U.S.C. 181 to use the practice of "trading time."

Section 1. Definition. "Trading time" means the practice of employees engaged in fire protection activities and employees of carrier by air subject to 45 U.S.C. 181 substituting for one another on regularly scheduled tours of duty, or for some part thereof, in order to allow[permit] an employee to be absent from work for personal matters.

Section 2. The practice of "trading time" shall not affect[be deemed to have no effect on] hours of work if ~~[the following criteria are met]:~~

- (1) The trading of time is done voluntarily by the employees participating in the program and not at the request of the employer;
- (2) The reason for trading time is due to the employee's desire or need to attend to personal matters and not to the employer's business operations; and
- (3) A record is maintained by the employer of all time traded by employees.

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LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, May 10, 2022)

803 KAR 1:067. Hours worked.

RELATES TO: KRS 337.275, 337.285, 29 C.F.R. 785.11 – 785.21, 785.23, 785.27 – 785.33, 785.35, 785.38, 785.39, 785.48
STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to promulgate[issue] administrative regulations to carry out the provisions of KRS 337.275 through[] 337.325, 337.345 and 337.385 through [] 337.405. ~~[The function of]~~ This administrative regulation establishes[is to define] the principals involved in determining what constitutes working time pursuant to KRS 337.275 and 337.285.

Section 1. Definition. "Employee" is defined by KRS 337.010(1)(e) and (2)(a).

Section 2. Employees Suffered or Permitted to Work. The criteria for "suffered or permitted to work" applicable to KRS 337.275 and 337.285 shall be[are] as established in 29 C.F.R. 785.11 through 785.13.

Section 3. Waiting Time. The criteria for "waiting time" applicable to KRS 337.275 and 337.285 shall be as established in 29 C.F.R. 785.14 through 785.17.

Section 4. Rest and Meal Periods. The criteria for rest and meal periods applicable to KRS 337.275 and 337.285 shall

be[are] as established in 29 C.F.R. 785.18 and 785.19.

Section 5. Sleeping Time and Certain Other Activities. The requirements for sleeping time and certain other activities applicable to KRS 337.275 and 337.285 shall be[are] as established in 29 C.F.R. 785.20, 785.21, and 785.23.

Section 6. Lectures, Meetings, and Training Programs. The requirements for lectures, meetings, and training programs applicable to KRS 337.275 and 337.285 shall be[are] as established in 29 C.F.R. 785.27 through 785.32.

Section 7. Travel Time. The requirements for travel time applicable to KRS 337.275 and 337.285 shall be[are] as established in 29 C.F.R. 785.33, 785.35, 785.38, and 785.39.

Section 8. Recording Work Time. (1) In accordance with KRS 337.320, there is no particular method of keeping a time record worked by an employee. Recordkeeping requirements shall be as established[are set out] in 803 KAR 1:068.

(2) Criteria for the use of time clocks applicable to KRS 337.275 and 337.285 shall be[are] as established in 29 C.F.R. 785.48.

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Department of Workplace Standards
(As Amended at ARRS, May 10, 2022)

803 KAR 1:068. Recordkeeping requirements.

RELATES TO: KRS 337.275, 337.285
STATUTORY AUTHORITY: KRS 337.295, 337.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.320 requires employers to keep records of hours of work and wages paid to employees subject to the provisions of KRS Chapter 337 for at least one (1) year after date of entry and authorizes[provides that] the commissioner determine what information is required. ~~[The function of]~~ This administrative regulation establishes[is to set forth the] recordkeeping requirements for employers subject to KRS Chapter 337.

Section 1. Definition. "Workday" means any consecutive twenty-four (24) hours.

Section 2. Each employer shall keep the records required by this administrative regulation safe and accessible at the place or places of employment, or at one (1) or more established central recordkeeping offices where the records shall be[are customarily] maintained. ~~if[Where]~~ the records are maintained at a central recordkeeping office, other than in the place or places of employment, the records shall be made available within seventy-two (72) hours following notice from the commissioner or the commissioner's authorized representative.

Section 3. Each[Every] employer shall maintain and preserve payroll or other records containing the following information and data for employees subject to KRS Chapter 337:

- (1) Name in full, and on the same record, the employee's identifying symbol or number if used in place of name on any time, work, or payroll records;
 - (2) Social Security number;
 - (3) Home address, including zip code;
 - (4) Date of birth, if under eighteen (18);
 - (5) Gender[Sex] and occupation in which employed;
 - (6) Time of day and day of week on which the employee's workweek begins.
- (a) Except as established in paragraph (b) of this

subsection, if the employee is part of a work force or employed in or by an employer all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole work force shall suffice.

(b) If ~~an[, however, any]~~ employee or group of employees has a workweek beginning and ending at a different time, a separate notation shall be kept for that employee or group of employees;

(7) Hours worked each workday and each workweek;

(8) Regular rate of pay and total straight-time earnings or wages for all hours worked during the workweek;

(9) Total overtime compensation for the workweek;

(10) Total additions to or deductions from wages paid each pay period. Each/Every employer making additions to or deductions from wages shall also maintain, in individual employee accounts, a record of the dates, amounts, and nature of the items that comprise/which make up the total addition and deductions; and

(11) Total wages paid each pay period and date of payment.

Section 4. Employers who make retroactive payment of wages or compensation due under KRS 337.275 and 337.285 shall:

(1) Prepare a report of each payment showing the amount of payment to each employee, the period covered by the payment, and the date of payment;

(2) File the original report, which shall evidence payment by the employer and receipt by the employee, with the commissioner or the commissioner's authorized representative within ten (10) days after payment is made;

(3) Deliver a copy of the report to the employee; and

(4) Preserve a copy of the report as part of the employee's records for at least one (1) year after date of entry.

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**LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, May 10, 2022)**

803 KAR 1:071. Executive, administrative, supervisory, or professional employees; salesmen.

RELATES TO: KRS 337.275, 337.285, 29 C.F.R. 541

STATUTORY AUTHORITY: KRS 337.010(2)(a)2, 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.010(2)(a)2 requires exemption for/exempts any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman~~[s]~~ or as an outside collector as the terms are defined by administrative regulations of the commissioner from both the minimum wage and overtime requirements established/set forth in KRS 337.275 and 337.285. This administrative regulation establishes/defines what constitutes an individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of an outside salesman or outside collector.

Section 1. Scope. (1) The exemptions established/set forth in KRS 337.010(2)(a) shall not apply to workers as established in 29 C.F.R. 541.3(a).

(2)

(a) The exemptions established/set forth in KRS 337.010(2)(a) shall not apply to workers as established in 29 C.F.R. 541.3(b)(1).

(b) The exempted employees established in paragraphs (a) this subsection shall/identified in subsection 2(a) of this section do not qualify as exempt employees for reasons established in 29 C.F.R. 541.3(b)(2) through 541.3(b)(4).

Section 2. Executive Employees. (1) The term, "individual employed in a bona fide executive capacity" in KRS 337.010(2)(a)2

shall include/includes employees:

(a) Compensated on a salary basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities; and

(b) Who meet the criteria as established in 29 C.F.R. 541.100(a)(2) through 541.100(a)(4) and 541.101.

(2) An "employee" employed in a bona fide executive capacity, as established by KRS 337.010(2)(a)2., shall also include an/Business owner. The term "employee employed in a bona fide executive capacity" in KRS 337.010(2)(a)2 also include any/ employee who owns at least a bona fide twenty (20) percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporation/enterprise/ or other type of organization, and who is actively engaged in its management. The salary requirements of Section 8 of this administrative regulation shall not apply to business owners established/described/ in this subsection.

(3) A person who performs activities established in 29 C.F.R. 541.102 shall be considered engaged in management/"Management" shall include activities as established in 29 C.F.R. 541.102].

(4) A customarily recognized department or subdivision shall comply with the criteria

~~[(3) The phrase "a customarily-recognized department or subdivision" is as] established in 29 C.F.R. 541.103.~~

(5) An executive exempt as established in KRS 337.010(2)(a)2. shall comply with the criteria

~~[(4) To qualify as an exempt executive under KRS 337.010(2)(a)2, the criteria shall be as] established in 29 C.F.R. 541.104.~~

(6) An employee's suggestions and recommendations shall be given "particular weight" if the factors established in 29 C.F.R. 541.105 have been met.

~~[(5) To determine whether an employee's suggestions and recommendations are given "particular weight" the factors shall be as established in 29 C.F.R. 541.105.]~~

~~[(7) [(6)] The criteria for concurrent performance of exempt and nonexempt work shall be as established 20 C.F.R. 541.106.~~

Section 3. Administrative Employees. (1) The term "individual employed in a bona fide administrative capacity" in KRS 337.010(2)(a)2 shall include employees:

(a) Compensated on a salary basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities; and

(b) Who meet the criteria as established in 29 C.F.R. 541.200(a)(2) and 541.200(a)(3).

(2) To qualify for the administrative exemption in KRS 337.010(2)(a)2, the criteria shall be as established in 29 C.F.R. 541.201 through 541.204.

Section 4. Professional Employees. (1) The term "individual employed in a bona fide professional capacity" in KRS 337.010(2)(a)2 shall include employees:

(a) Compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities; and

(b) Who meet the criteria as established in 29 C.F.R. 541.300(a)(2).

(2) To qualify for the learned professional exemption, the criteria shall be as established in 29 C.F.R. 541.301.

(3) To qualify for the creative professional exemption, the criteria shall be as established in 29 C.F.R. 541.302.

(4) Teachers.

(a) The term "individual employed in a bona fide professional capacity" in KRS 337.010(2)(a)2 shall include any employee as established in 29 C.F.R. 541.303(a) through (c).

(b) The salary requirements of Section 8 of this administrative regulation shall not apply to the teaching professionals established/described/ in this subsection.

(5) Practice of law or medicine.

(a) The term "individual employed in a bona fide professional capacity" in KRS 337.010(2)(a)2 shall include any employee as established in 29 C.F.R. 541.304(a) through 541.304(c).

(b) The salary requirements of Section 8 of this administrative regulation shall not apply to the employees established[described] in this subsection.

Section 5. Supervisors. The term "individual employed in a bona fide supervisory capacity" in KRS 337.010(2)(a)2 shall include[includes] employees:

(1) ~~[Who are]~~Compensated for his or her services on a salary basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities; and

(2) Who meet the criteria as established in 29 C.F.R. 541.104.

Section 6. Outside Sales Employees. (1) The term "individual employed in the capacity of outside salesman" in KRS 337.010(2)(a)2 shall include employees:

(a) Whose primary duty is:

1. Making sales; or

2. Obtaining orders or contracts for services or for the use of facilities for which consideration will be paid by the client or customer; and

(b) ~~[Who is]~~Customarily and regularly engaged away from the employer's place or places of business in performing the employer's primary duty.

(2) In determining the primary duty of an outside sales employee, the criteria shall be as established in 29 C.F.R. 541.500(b).

(3) The salary requirements of Section 8 of this administrative regulation shall not apply to employees established[described] in this section.

(4) Making sales or obtaining orders.

(a) The criteria for making sales within the meaning of this section shall include criteria as established 29 C.F.R. 541.501(b) and 541.501(d).

(b) Obtaining orders for the use of facilities shall include[includes] the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies.

(5) The criteria for an outside sales employee to be customarily and regularly engaged "away from the employer's place or places of business" shall be as established in 29 C.F.R. 541.502.

(6) The criteria for determining if promotional work is exempt under this section shall be as established in 29 C.F.R. 541.503.

(7) The criteria for ~~[drivers who sell to be]~~exempt drivers who sell under this section shall be as established in 29 C.F.R. 541.504.

Section 7. Outside Collector. (1) The term "individual employed as an outside collector" in KRS ~~337.010(2)(a)2~~[337.010(20)(a)2] shall include any employee who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business and whose primary duty is collecting money for:

(a) ~~[Collecting money for]~~Goods or services previously or presently provided by the~~[furnished by his]~~ employer; or

(b) ~~[Collecting money for]~~An account placed in the hands of his employer for collection.

(2) In determining the primary duty of an outside collector, work performed incidental to and in conjunction with the employee's outside collection activities shall be exempt work.

(3) The salary requirements of Section 8 of this administrative regulation shall not apply to the outside collector employees established[described] in this section.

Section 8. Salary Requirements. (1) To qualify as an exempt executive, administrative, professional, or supervisory employee under KRS 337.010(2)(a)2, an employee shall be compensated on a salary basis at a rate of not less than \$684 per week, exclusive of board, lodging, or other facilities. Administrative and professional employees may also be paid on a fee basis as established[defined] in Section 12 of this administrative regulation.

(2) The \$684 per week may be translated into equivalent

amounts for periods longer than one (1) week. The requirement shall be met if the employee is compensated biweekly on a salary basis of at least \$1,368, semimonthly on a salary basis of at least \$1,482, or monthly on a salary basis of at least \$2,964. ~~[Except,]~~The shortest period of payment that meets this compensation requirement shall be[is] one (1) week.

(3) For academic administrative employees, the compensation requirement may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as established[provided] in Section ~~4(4)(b)~~[3(4)] of this administrative regulation.

(4) For computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than twenty-seven (27) dollars and sixty-three (63) cents an hour, as established[provided] in Section 14 of this administrative regulation.

(5) The exception from the salary or fee requirement shall not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions that[which] service the medical profession.

Section 9. Highly-compensated Employees. (1) An employee with total annual compensation of at least \$107,432 shall be exempt under KRS 337.010(2)(a)2 if the employee customarily and regularly performs any one (1) or more of the exempt duties or responsibilities of an executive, administrative, or professional employee established[identified] in this administrative regulation. ~~[Where the annual period covers periods both prior to and after the date this administrative regulation is effected, the amount of total annual compensation due will be determined on a proportional basis.]~~

(2)(a) "Total annual compensation" shall include at least \$684 per week paid on a salary or fee basis. Total annual compensation may also include commissions, nondiscretionary bonuses, and other nondiscretionary compensation earned during a fifty-two (52) week period.

(b) "Total annual compensation" shall not include board, lodging, or other facilities as established[defined] in Section 13 of this administrative regulation~~[,]~~ and shall not include payments for medical insurance, payments for life insurance, contributions to retirement plans, and the cost of other fringe benefits.

(c) If an employee's total annual compensation does not total at least the minimum amount established in subsection (1) of this section by the last pay period of the fifty-two (52) week period, the employer may, during the last pay period or within one (1) month after the end of the fifty-two (52) week period, make one (1) final payment sufficient to achieve the required level.

(d) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if the employee receives a pro rata portion of the minimum amount established in subsection (1) of this section, based upon the number of weeks that the employee will be or has been employed. An employer may make one (1) final payment as under paragraph ~~(c)~~(b) of this subsection within one (1) month after the end of employment.

(e) The employer may use any fifty-two (52) week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year shall apply.

(3) A highly compensated employee shall qualify for exemption if the employee customarily and regularly performs any one (1) or more of the exempt duties or responsibilities of an executive, administrative, or professional employee established[identified] in this administrative regulation.

(4) This section shall not apply to employees whose primary duty includes performing nonoffice or manual work.

Section 10. Salary Basis. (1)(a) The criteria for an employee to be considered paid "on a salary basis" within the meaning of this administrative regulation shall be as established by 29 C.F.R.

541.602(a)(1) through 541.602(a)(2).

(b) Up to ten (10) percent of the salary amount required in ~~paragraph (a) of this subsection~~**[Section 10(1)(a) of this administrative regulation]** may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions, that are paid annually or more frequently.

1. The employer may utilize any fifty-two (52) week period as the year, such as a calendar year, fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year shall apply.

2. This provision shall not apply to highly compensated employees.

3. If by the last pay period of the fifty-two (52) week period the sum of the employee's weekly salary plus nondiscretionary bonus, incentive, and commission payments received is less than fifty-two (52) times the weekly salary amount required, the employer may make one **(1)** final payment sufficient to achieve the required level no later than the next pay period after the end of the year. Any final payment made after the end of the fifty-two (52) week period shall count only toward the prior year's salary amount.

4. An employee who does not work a full fifty-two (52) week period for the employer, either because the employee is newly hired after the beginning of this period or ends the employment before the end of this period, may qualify for exemption if the employee receives a pro rata portion of the minimum amount established, based upon the number of weeks that the employee will be or has been employed. An employer may make one **(1)** final payment under ~~subparagraph 3. of this paragraph~~**[subsection (1)(b)3 of this section]** within one **(1)** pay period after the end of employment.

(2)(a) The exceptions to the prohibition against deductions from pay in the salary basis requirement shall be as established in 29 C.F.R. 541.602(b)(1) and 541.602(b)(3) through 541.602(c).

(b) Deductions from pay in the salary basis requirement may be made for absences of one (1) or more full days occasioned by sickness or disability, if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary occasioned by both sickness and disability.

1. If the employer's particular plan, policy, or practice provides compensation for the absences, deductions for absences of one (1) or more full days because of sickness or disability may be made before an employee has qualified under the plan, policy, or practice, and after the employee has exhausted his or her leave allowance thereunder. It is not required that the employee be paid any portion of his or her salary for the day or days for which the employee receives compensation for leave under the plan, policy or practice.

2. If the employer operates under a state sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of one (1) or more full days if benefits are provided in accordance with the particular law or plan.

3. For an industrial accident, **if the employer has a plan, policy, or practice of providing compensation for sickness and disability other than that relating to industrial accidents,** the "salary basis" requirement shall be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer ~~[- if, the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents].~~

(3) The effect of improper deductions from salary **shall be** as established in 29 C.F.R. 541.603.

Section 11. The criteria for the minimum guarantee plus extras **shall be** as established in 29 C.F.R. 604.

Section 12. The criteria for when administrative and professional employees may be paid on a fee basis, rather than on a salary basis **shall be** as established in 29 C.F.R. 541.605.

Section 13. Board, Lodging, or Other Facilities. (1) The phrase "exclusive of board, lodging, or other facilities" shall mean "free

and clear" or independent of any claimed credit for noncash items of value that an employer **might** provide to an employee.

(a) Costs incurred by an employer to provide an employee with board, lodging, or other facilities shall not count towards the minimum salary amount required for exemption under this administrative regulation.

(b) Separate transactions **shall not be** prohibited between employers and their employees, but the costs to employers associated with the transactions shall not be considered in determining if an employee has received the full required minimum salary payment.

(2) "Other facilities" **shall include** items similar to board and lodging, such as meals **provided** at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; merchandise furnished at company stores or commissaries, including articles of food, clothing, and household effects; housing **provides** for dwelling purposes; and transportation **provided** to employees for ordinary commuting between their homes and work.

Section 14. Computer Employees. (1) Computer system analysts, computer programmers, software engineers, or other similarly skilled workers in the computer field shall be eligible for an exemption as professionals under KRS 337.010(2)(a)2. Job titles shall not be determinative of the applicability of this exemption.

(2) The exemption for computer employees shall apply to any computer employee as established in 29 C.F.R. 541.400(b) and 541.402.

(3) The exemption for computer employees shall not include employees **as** established in 29 C.F.R. 541.401.

Section 15. Miscellaneous Provisions. (1) The criteria for primary duty **shall be** as established in 29 C.F.R. 541.700.

(2) The phrase "customarily and regularly" **shall be** as established in 29 C.F.R. 541.701.

(3) Directly and closely related shall be as established in 29 C.F.R. 541.703

(4) The criteria for determining **if** the use of manuals precludes an exemption under KRS 337.010(2)(a)2 **shall be** as established in 29 C.F.R. 541.704.

(5) The criteria for the prohibition of KRS 337.010(2)(a)2 exemption to trainees **shall be** as established in 29 C.F.R. 541.705.

(6) The criteria for the application of emergencies to exempt employees shall be as established in 29 C.F.R. 541.706.

(7) The criteria for determining **if** occasional tasks **preclude** exemption under KRS 337.010(2)(a)2 **shall be** as established in 29 C.F.R. 541.707.

(8) The criteria for the exemption of employees performing a combination of exempt duties as **established** in this administrative regulation **shall be** as established in 29 C.F.R. 541.708.

(9) The requirement that the employee be paid on a salary basis shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$1,043 a week (exclusive of board, lodging, or other facilities).

(a) An employee in this industry who is otherwise exempt under Sections 2, 3, or 4 of this administrative regulation, and who is employed at a base rate of at least \$1,043 a week **shall be** exempt if paid a proportionate amount, based on a week of not more than six (6) days, for any week in which the employee does not work a full workweek for any reason.

(b) An otherwise exempt employee in this industry **shall qualify** for exemption if the employee is employed at a daily rate under the following circumstances:

1. The employee is in a job category for which a weekly base rate is not provided, and the daily base rate would yield at least \$1,043 if six (6) days were worked; or

2. The employee is in a job category having a weekly base rate of at least \$1,043, and the daily base rate is at least one-sixth (1/6) of such weekly base rate.

(10) Employees of public agencies.

(a) An employee of a public agency who otherwise meets the salary basis requirements of Section 10 of this administrative regulation shall not be disqualified from exemption under Sections 2, 3, 4, 5, or 14 of this administrative regulation on the basis that the employee is paid according to a pay system established by statute, ordinance, or administrative regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and ~~that[which]~~ requires the public agency employee's pay to be reduced or the employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one (1) work-day if accrued leave is not used by an employee because:

1. Permission for its use has not been sought or has been sought and denied;
2. Accrued leave has been exhausted; or
3. The employee chooses to use leave without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to a budget required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

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LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, May 10, 2022)

803 KAR 1:076. Exclusions from minimum wage and overtime.

RELATES TO: KRS Chapter 199, 337.010, 337.275, 337.285, 29 U.S.C. 213, 29 C.F.R. 782.2

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.010 requires the exclusion[excludes] certain types of employees from being subject to the minimum wage and overtime provisions of KRS 337.275, and KRS 337.285 requires the exclusion of[excludes] certain employees from its coverage. [The function of]This administrative regulation establishes[is to define these] exclusions from minimum wage and overtime provisions.

Section 1. Definitions. (1) "Excise taxes" means taxes [that are] levied on:

(a) The manufacture, sale, or consumption of a commodity;;

(b) Licensure[taxes levied on license] to pursue certain occupations and corporate privileges.

(2) "Hotel":

(a) Means an establishment known to the public as a hotel, which is primarily engaged in providing lodging or lodging and meals for the general public. Included are hotels operated by membership organizations and open to the general public and apartment hotels that[which] provide accommodations for transients; and[.]

(b) Does not mean an establishment with[whose] income [is] primarily from providing a permanent place of residence or from providing residential facilities complete with bedrooms and kitchen for prolonged periods shall not be considered a hotel.

(3) "Motel" means an establishment that[which] provides services similar to that of a "hotel" defined[described] in subsection (2) of this section, but that[which] caters mostly to the motoring public, providing it with motor car parking facilities either adjacent to the room or cabin rented or at some other easily accessible place. Included in the term "motel" are those establishments known to the public as motor hotels, motor lodges, motor courts, motor inns, tourist courts, and tourist lodges.

(4) "Restaurant":

(a) Means an establishment [which is] primarily engaged in selling and serving [to purchasers at]retail prepared food and beverages for consumption. This includes establishments commonly known as lunch counters, refreshment stands, cafes, cafeterias, coffee shops, diners, dining rooms, lunch rooms, and[er] tea rooms; and[.]

(b) Does not mean:

1. [The term "restaurant" shall not include]Drinking establishments, such as bars or cocktail lounges, whose sale of alcoholic beverages exceed the receipts from sales of prepared foods and nonalcoholic beverages; or

2. Establishments offering meal service on a boarding or term basis or providing the service only as an incident to the operation of a business of another kind and primarily to meet institutional needs for continuing meal service to persons whose continued presence is required for operation, such as a boarding house;; dining facilities of a boarding school, college, or university that[which] serves its students and faculty;; lunchroom facilities for private and public day school students;; and other institutional food service facilities providing long-term meal service to stable groups of individuals as an incident to institutional operations in a manner wholly dissimilar to the typical transactions between a restaurant and its customers.

(5) "Retail store" or "service industry" means an establishment seventy-five (75) percent of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

Section 2. Hotel or Motel. If hotels or motels are primarily engaged in providing lodging facilities, food, and drink to the public, the exemption established[provided] for hotels and motels in KRS 337.010(2)(a)6 and ~~[KRS]~~337.285 shall stand even if[not be defeated because] the hotel or motel engages in all or some of the following activities:

- (1) The operation of valet services offering cleaning and laundering service for the garments of their guests;
- (2) News stands;
- (3) Hobby shops;
- (4) Renting out of their public rooms for meetings;
- (5) Lectures;
- (6) Dances;
- (7) Trade exhibits; or
- (8) Weddings.

Section 3. Exemptions from Minimum Wage and Overtime. (1) Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than \$95,000 for the five (5) preceding years, exclusive of excise taxes at the retail level, shall be exempt from both the minimum wage and overtime provisions of the statutes.

(2) To qualify for this exemption, the establishment shall be recognized as retail in the particular industry. Typically, a retail or service establishment [is one which] sells goods or services to the general public and[—it] serves the everyday needs of the community in which it is located. The retail or service establishment performs a function in the business organization that[which] is at the end of the stream of distribution, disposing in small quantities of the products and skills of the organization and does not take part in the manufacturing process.

(3) To compute the average annual gross volume of sales made for business done, the business shall add all the sales made for business done for the five (5) preceding years, exclusive of excise taxes at the retail level, and divide by five (5). If this average is less than \$95,000, the establishment shall be exempt.

(a) If the establishment has been in business for less than five (5) years, the gross sales shall be totaled for the years the establishment has been in business and divided by the number of years. If this average is less than \$95,000, the establishment shall be exempt.

(b) If the establishment has been in business for less than one (1) year, the gross sales shall be totaled for the number of months

the establishment has been in business and divided by the number of months. This amount shall then be multiplied by twelve (12). If this amount is less than \$95,000, the establishment shall be exempt.

(c) Excise taxes at the retail level shall not be computed in totaling the gross volume of sales. Excise taxes ~~[which are]~~ levied at the manufacturers, wholesalers, or other distributive level shall not be excluded in calculating the dollar volume of sales.

Section 4. Exemptions from Overtime. (1) Employees of retail stores ~~with/whose~~ principal duties ~~are~~ connected with the selling, purchasing, and distributing of goods and employees of a restaurant, hotel, and motel operation. ~~Any; any~~ employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935, ~~27 U.S.C. 213,;~~ any sales person, parts person, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if the employee is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers; or any sales person primarily engaged in selling trailers, boats, or aircraft, if the employee is employed by a nonmanufacturing establishment primarily in the business of selling trailers, boats, or aircraft to ultimate purchasers; any driver employed by an employer engaged in the business of operating taxi cabs; employees whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected and abused and who are in the care of private nonprofit child caring facilities licensed by the Cabinet for Health and Family Services under KRS Chapter 199, and any individual who is employed by a third-party employer or agency other than the family or household using his or her services to provide in-home companionship services for a sick, convalescing, or elderly person shall be exempt from the overtime provisions of KRS 337.285.

(2) ~~An employee of a retail store with principal duties not connected to~~ ~~Employees of a retail store whose principal duties are not connected with~~ the selling, purchasing, and distributing of the goods shall not be considered as exempt employees, ~~and nor shall an employee~~ ~~nor will employees~~ of a service establishment ~~that/which~~ does not sell goods, but is in the business of selling a service.

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**LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, May 10, 2022)**

803 KAR 1:081. Board, lodging, gratuities, and other allowances.

RELATES TO: KRS 337.275, 337.285, 29 C.F.R. 531.31 – 531.58

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to promulgate administrative regulations permitting allowances as part of the wage rates applicable under the statutes for board, lodging, gratuities, and other facilities. ~~[The function of]~~ This administrative regulation ~~establishes/is to set forth~~ what allowances may be credited toward the payment of wages as required KRS Chapter 337.

Section 1. Definitions. (1) "Tip" means a sum presented by a customer as a gift or gratuity in recognition of some service performed. A tip is distinguished from a payment of a charge made for the service.

(2) "Tipped employees" is defined ~~by/in~~ KRS 337.010(2)(d).

(3) "Wages" is defined ~~by/in~~ KRS 337.010(1)(c).

Section 2. Board, Lodging, and Other Facilities. (1) In accordance with KRS 337.275 and 337.285, an employer may be permitted to include as wages paid to an employee, the reasonable cost of ~~providing/furnishing~~ an employee with board, lodging, or other facilities if they are customarily ~~provided/furnished~~ by the employer to employees.

(a) Reasonable cost shall not include a profit to the employer or to any affiliated person.

(b) This section shall not prohibit payment of wages in facilities ~~provided/furnished~~ either as additions to a stipulated wage or as items for which deductions from the stipulated wage will be made. The reasonable cost of board, lodging, or other facilities may be considered as part of the wage paid an employee only ~~if/where~~ customarily ~~provided/furnished~~ to the employee. Not only shall the employee receive the benefits of the facility for which the employee is charged, but ~~it is essential that the~~ acceptance of the facility ~~shall~~ be voluntary and coerced.

(2) The criteria for board, lodging, or other facilities being customarily ~~provided/furnished~~ as applicable to KRS 337.275 and 337.285 ~~shall be/are~~ as established in 29 C.F.R. 531.31.

(3) Other facilities.

(a) The criteria for "other facilities," as applicable to KRS 337.275 and 337.285, ~~shall be/are~~ as established in 29 C.F.R. 531.32(a).

(b) The cost of ~~providing/furnishing~~ facilities ~~that/which~~ are primarily for the benefit or convenience of the employer shall not be recognized as reasonable and shall not be included in computing wages. Facilities primarily for the benefit or convenience of the employer ~~shall~~ include, ~~for example~~ ~~but are not limited to~~:

1. Tools of the trade and other materials and services incidental to carrying on the employer's business;
2. The cost of any construction by or for the employer; and
3. The cost of uniforms and of their laundering, ~~if/where~~ the nature of the business requires the employees to wear a uniform.

(4) The prohibition of kickbacks, as applicable to KRS 337.275 and 337.285, ~~shall be/is~~ as established in 29 C.F.R. 531.35.

(5) The criteria for payment ~~if/where~~ additions or deductions are involved in nonovertime workweeks, as applicable to KRS 337.375 and 337.285, ~~shall be/are~~ as established in 29 C.F.R. 531.36(a).

(6) Overtime workweeks.

(a) Pursuant to KRS 337.285, ~~an employee/employees~~ shall receive compensation for overtime hours at a rate of not less than one and one-half (1 1/2) times the rate at which the employee is employed. ~~If/When~~ overtime is worked by an employee who receives the whole or part of his or her wage in facilities and it becomes necessary to determine the portion of wages represented by facilities, all of the facilities shall be measured by the requirements of this administrative regulation.

(b) Deductions may be made on the same basis in an overtime workweek as in non-overtime workweeks, if their purpose and effect are not to evade the overtime requirements of KRS 337.285.

1. ~~However,~~ The amount deducted shall not exceed the amount ~~that/which~~ could be deducted if the employee had only worked the maximum number of straight-time hours during the workweek.

2. Deductions in excess of this amount for the items shall be ~~prohibited/illegal~~ in overtime workweeks as well as in non-overtime workweeks.

3. There ~~shall not be a/is no~~ limit on the amount ~~that/which~~ may be deducted for board, lodging, or other facilities in overtime workweeks ~~if/provided that~~ these deductions are made only for the reasonable cost of the items ~~provided/furnished~~.

(c) ~~If/Where~~ deductions are made from the stipulated wage of an employee, the regular rate of pay ~~shall be based on/is arrived at on the basis of~~ the stipulated wage before any deductions have been made. ~~If/Where~~ board, lodging, or other facilities are customarily ~~provided/furnished~~ as addition to a cash wage, the reasonable cost of the facilities to the employer shall be considered as part of the employee's regular rate of pay.

Section 3. Payment Made to Person Other than Employee. (1) Amounts deducted for taxes. Taxes ~~[which are]~~ assessed against the employee and ~~[which are]~~ collected by the employer and forwarded to the appropriate governmental agency ~~shall[may]~~ be included as wages. This principle ~~shall be[is]~~ applicable to the employee's share of Social Security, as well as other federal, state, or local taxes. ~~A deduction shall not[No deduction shall]~~ be made for any tax or share of a tax ~~that[which]~~ the law requires to be borne by the employer.

(2) The criteria for payments to third persons pursuant to a court order, ~~as~~ applicable to KRS 337.275 and 337.285, ~~shall be[are]~~ as established in 29 C.F.R. 531.39(a).

(3) The criteria for payments to an employee's assignee, ~~as~~ applicable to KRS 337.275 and 337.285, ~~shall be[are]~~ as established in 29 C.F.R. 531.40.

Section 4. Payment of Wages to Tipped Employees. (1) Conditions for taking tip credits in making wage payments.

(a) The wage credit permitted on account of tips under KRS 337.275(2) shall be taken only with respect to wage payments made under KRS Chapter 337 to those employees whose occupations in the workweeks for which the payments are made are those of "tipped employees."

(b) To determine ~~if[whether]~~ a tip credit may be taken in paying wages to a particular employee, it is necessary to know:

1. What payments constitute tips;

2. ~~If[Whether]~~ the employee receives more than thirty (30) dollars a month in payments in the occupation in which the employee is engaged; and

3. ~~If[Whether]~~ in the occupation the employee receives these payments in that amount customarily and regularly.

(2) General characteristics of tips.

(a) To qualify as a tip, the customer shall determine:

1. ~~If[Whether]~~ a tip is given;

2. The amount of the tip; and

3. Who shall be the recipient of the tip.

(b) Only tips actually received by an employee as money belonging to the employee, which are used as the employee chooses free of any control by the employer, shall be counted in determining ~~if[whether]~~ the employee is a tipped employee within the meaning of the KRS Chapter 337 and in applying the provisions of KRS 337.275(2).

(3) The following shall not be considered tips:

(a) Criteria established in 29 C.F.R. 531.55(a);

(b) ~~If[Where]~~ the employment agreement ~~includes[is-such]~~ that amounts presented by customers as tips belong to the employer and shall be credited or turned over to the employer, the employee is in effect collecting for his or her employer additional income from the operations of the employer's establishment. Even though the amounts are not collected by imposition of any compulsory charge on the customer, the employee is not receiving tips within the meaning of KRS Chapter 337.

(4) More than thirty (30) dollars a month in tips. If an employee employed is not a tipped employee, the employee shall receive the full compensation required by KRS Chapter 337 in cash or allowable facilities without any credit for tips received.

(a) Pursuant to KRS 337.010(2)(d), ~~[the definition of]~~ tipped employee does not require that the calendar month be used in determining ~~if[whether]~~ more than thirty (30) dollars a month is customarily and regularly received as tips. A recurring monthly period beginning on the same day of the calendar month may be used.

(b) The fact that an employee is part of a group ~~that[which]~~ has a record of receiving more than thirty (30) dollars a month in tips shall not qualify the employee as a tipped employee.

(5) The criteria for "customarily and regularly", as applicable to KRS 337.010(2)(d), ~~shall be[are]~~ as established in 29 C.F.R. 531.57.

(6) Criteria for the exception of initial and terminal months of employment from the requirement that a tipped employee receive more than thirty (30) dollars a month in tips ~~shall be[is]~~ as established in 29 C.F.R. 531.58.

(7) The tip wage credit. In determining compliance with the

wage payment requirements of ~~[the statutes, under the provisions of]~~ KRS 337.275(2), the amount paid to a tipped employee by an employer ~~shall be[is]~~ deemed to be increased on account of tips by an amount equal to the formula ~~established in KRS 337.275(2) if[set forth in statute provided that]~~ the employer satisfies all the requirements in the workweek for which the wage payment is made.

(a) This credit ~~shall be[is]~~ in addition to any credit for board, lodging, or other facilities ~~that[which]~~ may be allowable under this administrative regulation. The actual amount ~~shall be[is]~~ left by ~~KRS 337.275(2)[the statute]~~ to determination by the employer on the basis of the employer's information taken from his or her records concerning the tipping practices and receipts in the establishment. In order for an employer to take the maximum credit allowed by this special provision, the tipped employee shall receive the maximum in actual tips.

(b) If the employee is receiving less than the amount credited, the employer ~~shall be[is]~~ required to pay the balance so that the employee receives at least the minimum wage with the combination of wages and tips.

1. The tip credit shall be taken only for hours worked by the employee in an occupation in which the employee qualifies as a tipped employee.

2. An employer shall not use any part of an employee's tips to pay the minimum wage to any employee; but may only apply credit toward the payment of the minimum wage to the employee who actually received the tip.

3. Under employment agreements requiring tips to be turned over or credited to the employer to be treated as part of the employer's gross receipts, the employer shall pay the employee the full minimum hourly wage.

(8) Overtime payments. ~~If[When]~~ overtime is worked by a tipped employee who is subject to the overtime pay provisions of KRS 337.285, the regular rate of pay ~~shall be[is]~~ determined by dividing the employee's total remuneration for employment in any workweek by the total number of hours actually worked in that workweek for which the compensation was paid. A tipped employee's regular rate of pay includes the amount of tip credit taken by the employer (not in excess of the formula ~~established[set forth]~~ in ~~KRS 337.275(2)[statute]~~), the reasonable cost of any facilities ~~provided[furnished]~~ the employee by the employer, and the cash wages including commissions and bonuses paid by the employer. Any tips received by the employee in excess of the tip credit need not be included in the regular rate. The tips ~~shall not constitute[are not]~~ payments made by the employer to the employee as remuneration for employment.

(9) Tip pooling. Pursuant to KRS 337.275(2), employees may enter into an agreement to divide tips among themselves. ~~If[Where]~~ employees enter into this type of agreement, the amounts retained by the employees ~~shall be[are]~~ considered tips of the individuals who retain them. ~~If[Where]~~ an employer requires employees to pool tips, ~~[no-]credit shall not~~ be taken and the employer shall pay the employee the full minimum wage.

Section 5. Records. ~~If[Where]~~ an employer uses the reasonable cost of ~~providing[furnishing]~~ an employee with board, lodging, or other facilities in meeting the requirements of KRS 337.275 and 337.285, it shall be necessary to keep the following records, in addition to those required by KRS 337.320:

(1) The facility being provided by the employer to the employee; and

(2) The cost being charged for the facility by the employer.

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LABOR CABINET
Department of Workplace Standards
(As Amended at ARRS, May 10, 2022)

803 KAR 1:091. Workers with Disabilities and Work Activities Centers' employee's wages.

RELATES TO: KRS 337.275 - 337.325, 337.285, 29 U.S.C. 201, 29 C.F.R. 525~~[337.345, 337.385-337.405]~~

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner to ~~promulgate~~*[issue]* administrative regulations permitting workers with disabilities and work activities centers' employees to be employed at less than the established minimum wage. KRS 337.010(2)(a)5 requires that the wages be ~~established~~*[set]* for a period of time fixed by the commissioner. ~~[The function of]~~This administrative regulation ~~establishes~~*[is to set]* certain standards to be used in obtaining these special rates.

Section 1. ~~Definitions. [As used in this administrative regulation, unless the context requires otherwise:]~~

(1) "Commissioner" is defined by KRS 337.010(1)(a).

(2) "Department" is defined in KRS 337.010(1)(b).

(3) "Work Activities Centers" means centers planned and designed to provide therapeutic activities for workers with severe disabilities affecting their productive capacity. The purpose of work activities centers is carrying out a recognized program of rehabilitation for workers with disabilities ~~and~~*[and/or]* providing the individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(4) "Worker with a Disability" is defined by 29 C.F.R. 525.3(d).

Section 2. (1) ~~An~~*[No]* employer shall ~~not~~ employ a worker with a disability or work activities center employee at less than the applicable minimum wage, unless the employment has been authorized by a special certificate issued by the commissioner or by the U.S. Department of Labor. The rate of pay and the period of time effective shall be ~~established~~*[fixed]* by the certificate.

(2) ~~If~~*[When]* the minimum wage ~~established~~*[provided]* by KRS 337.275 is less than or equal to the federal minimum wage, the commissioner ~~shall~~*[will]* not issue certificates for persons whose employment is subject to the federal minimum wage provisions of the Fair Labor Standards Act of 1938~~, as amended~~ (FLSA), 29 U.S.C. 201. For these persons the employer shall request a certificate from the U.S. Department of Labor. Valid certificates issued by the U.S. Department of Labor, Wage Hour Division, which authorize rates of pay lower than the applicable Kentucky minimum wage, ~~shall~~*[will]* be accepted as authority to pay subminimum wage rates, ~~if~~*[provided that]* the information submitted in the applications is complete and accurate. If there is any reason to believe that the employment is, or may be in the future, subject to the FLSA minimum wage, the federal certificate shall be obtained~~[,]~~ and a state certificate ~~shall~~*[will]* not be necessary.

(3) For workers with disabilities or work activities center employees not covered by the minimum wage provisions of the FLSA, certificates may be issued by the commissioner if all of the requirements for federal certification are met. These requirements ~~shall be as published in 29 C.F.R. [are published in Title 29,] Part 525 [of the Code of Federal Regulations]~~. For state certification, the commissioner ~~shall~~*[will]* exercise the authority and functions ~~that~~*[which]* the administrator has for the federal certificates.

(4) In the event an employer misuses a certificate in any way, the commissioner reserves the right to revoke the certificate and to refuse to issue another certificate in the future. If the certificate was issued by the U.S. Department of Labor, the commissioner ~~shall~~*[will]* revoke any authority for payment of less than the minimum wage ~~established~~*[provided]* by KRS 337.275.

(5) Application ~~to Employ Workers with Disabilities at Subminimum Wages shall [for Kentucky special minimum wage certificates for workers with disabilities and work activities center employees will]~~ be submitted to the Division of

Wages and Hours, Kentucky Department of Workplace Standards, Kentucky Labor Cabinet, 500 Mero Street, 3rd floor, Frankfort, Kentucky 40601 and shall be accompanied by the completed federal special minimum wage certificate applications, as appropriate under 29 C.F.R. Part 525~~[Title 29, Part 525 of the Code of Federal Regulations]~~.

Section 3. Incorporation by Reference. (1) "Application to Employ Workers with Disabilities at Subminimum Wages", April 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workplace Standards, Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, May 10, 2022)

922 KAR 1:470. Central registry.

RELATES TO: KRS 17.165(6), 61.876, 160.151, 160.380,~~[194A.050(4),]~~ 194A.380-194A.383, 199.466, 199.896(19), 199.898(1)(a), 211.684(1)(a), 403.352, 600.020(1), (40), (61), (62), ~~[605.130(7), 605.150(4),]~~ 620.050, 620.051, 625.050-625.120, 42 U.S.C. 671(a)(20), 5106a(b), 9858f

STATUTORY AUTHORITY: KRS 194A.050(1), 605.130(7), 605.150(1), 620.051(2)

NECESSITY, FUNCTION, and CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(7), which authorizes the cabinet to perform services necessary for the protection of children. KRS 620.051(2) requires the cabinet to promulgate administrative regulations to establish the central registry and the process for a background check of the cabinet's child abuse and neglect records. This administrative regulation establishes the procedure by which the cabinet shall conduct a child abuse or neglect check using information in the central registry.

Section 1. Definitions. (1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Administrative review" means that the status of the individual subject to the central registry check is pending the outcome of an:

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

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

(3) "Child fatality" is defined by KRS 211.684(1)(a).

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

(5) "Sexual abuse" is defined by KRS 600.020(61).

(6) "Sexual exploitation" is defined by KRS 600.020(62).

Section 2. Central Registry. (1) The central registry shall include the name of each individual:

(a) Who has been found by the cabinet to have abused or neglected a child on or after October 1, 1998; and

(b)1. Who waived the right to appeal a substantiated finding of child abuse or neglect in accordance with:

a. 922 KAR 1:480;

- b. 922 KAR 1:320; or
- c. 922 KAR 1:330, Section 11; or
- 2. Whose substantiated incident was upheld upon appeal.
 - (2) Each name shall:
 - (a) Remain on the central registry for a period of at least seven (7) years; and
 - (b) Be removed from the central registry after a period of seven (7) years if:
 - 1. No additional incident of child abuse or neglect has been substantiated by the cabinet since the time of the incident for which the individual's name was placed on the registry; and
 - 2. Cabinet records indicate that the incident for which the individual's name was placed on the registry did not relate to:
 - a. Sexual abuse or sexual exploitation of a child;
 - b. A child fatality related to abuse or neglect;
 - c. A near fatality related to abuse or neglect; or
 - d. Involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.
 - (3) This administrative regulation shall not apply to cabinet background checks required by 922 KAR 1:490.
 - (4) This administrative regulation shall not limit the cabinet's ability to disclose information in accordance with KRS 620.050 and 42 U.S.C. 5106a(b)(2)(B)(viii), (ix), or (x).

Section 3. Procedure for Requesting a Central Registry Check.

- (1) If information from the central registry is required or authorized by law, a request for a central registry check may be made by an:
 - (a) Individual;
 - (b) Organization; or
 - (c) Other entity.
- (2) The cabinet shall conduct a check of the central registry for each individual who:
 - (a) Submits a request for a check of the central registry in accordance with subsection (4) of this section; and
 - (b)1. Applies for initial licensure;
 - 2. Is hired by, or volunteers with, an entity required by law to obtain information contained in the central registry; or
 - 3. Is hired by, or volunteers with, an entity that may require a central registry check as a condition for working with children on a regular basis.
- (3) An individual who is not required or authorized by law to obtain information contained in the central registry shall not receive a completed check and may instead submit an open records request in accordance with 922 KAR 1:510.
- (4) A request for a central registry check shall be made:
 - (a) By electronically submitting to the cabinet through the Kentucky Online Gateway:
 - 1.a. A completed DCC-374, Child Care Central Registry Check, for an individual in child care as specified by 42 U.S.C. 9858f, KRS 199.466, or 922 KAR 2:280; or
 - b. A completed DPP-156, Central Registry Check, for an individual required by a law not specified in clause a. of this subparagraph no later than five (5) working days after:
 - (i) The date of employment of an individual required by law to submit to a central registry check; or
 - (ii) A volunteer's first day, if the volunteer is required by law to submit to a central registry check; and
 - 2. A nonrefundable fee of ten (10) dollars paid by credit or debit card; or
 - (b) Through another cabinet system, including the Kentucky National Background Check Program established by 906 KAR 1:190.
- (5) A parent or guardian shall be required to consent to the central registry check of an individual who/that is under the age of eighteen (18).
- (6) A state requesting a child abuse or neglect check from the cabinet as required by 42 U.S.C. 671(a)(20) shall follow the procedures described in 922 KAR 1:490, Section 5[4].

Section 4. Administrative Review. (1) The cabinet shall indicate on a central registry check if the individual is pending administrative review by the cabinet.

- (2) An individual subject to administrative review in accordance

with this section may submit a request for the disclosure of records in accordance with 922 KAR 1:510 to be fulfilled once the administrative review process is complete.

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

- (a) "DPP-156, Central Registry Check," 4/2022[12/2021][8/2019]; and
- (b) "DCC-374, Child Care Central Registry Check," 4/2022[12/2021][8/2019].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dCBS/Pages/default.aspx>.

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**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(As Amended at ARRS, May 10, 2022)**

922 KAR 2:280. Background checks for child care staff members, reporting requirements, and appeals.

RELATES TO: KRS 17.165, 17.500-17.580, 199.011(14), 199.466, 199.894, Chapter 209, 336.220, Chapter 506, 511, 515, 520, 525, 527, 529, 530, 620.050-620.120, 625.050-625.120, 45 C.F.R. 98.43, 34 U.S.C. 20921, 42 U.S.C. 9857-9858q

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.8965(8), 199.8982(1)(f), 199.8994(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its program. KRS 199.896(2) and 199.8982(1)(f) authorize, and 199.8994(6) requires the cabinet to promulgate administrative regulations pertaining to standards of a child-care center, family child-care home, and a child care provider that receives a child care subsidy administered by the cabinet, including criminal convictions that impact the safety and security of children in care. KRS 199.8965(8) requires the cabinet to promulgate an administrative regulation necessary to implement child care staff member background checks in accordance with 42 U.S.C. 9858f and implementing federal rule. This administrative regulation establishes background check requirements for child care staff members, reporting requirements, and appeals.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.894(1).

(2) "Child-care center" is defined by KRS 199.894(3).

(3) "Child care provider" is defined by 45 C.F.R. 98.43(a)(2)(i).

(4) "Child care staff member" is defined by 45 C.F.R. 98.43(a)(2)(ii).

(5) "Family child-care home" is defined by KRS 199.894(5).

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

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

(8) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Applicability and Exceptions. This administrative regulation shall apply to a child care staff member age eighteen

(18) or older, including:

- (1) An owner, operator, or employee of a child care provider;
- (2) A child-care center licensee or director;
- (3) An adult household member of a Type II child-care center, family child-care home, or provider registered in accordance with 922 KAR 2:180;
- (4) An employee who is present during the time a child is receiving care;
- (5) Any person with supervisory or disciplinary control over a child in care; and
- (6) Any person having unsupervised contact with a child in care.

Section 3. Implementation and Enforcement. (1) ~~[A person who is a child care staff member prior to January 1, 2018, shall submit to and complete background checks in accordance with this administrative regulation no later than September 30, 2018.~~

~~(2) A child care staff member [hired on or after April 1, 2018,] shall:~~

~~(a) Have completed] complete the background checks required in accordance with this administrative regulation and be [been] found to have no disqualifying offense prior to becoming a child care staff member.~~

~~(2) [; or~~

~~(b) 1. Have submitted to the background checks required in accordance with this administrative regulation;~~

~~2. Not be left unsupervised with a child in care pending the completion of the background checks in accordance with this administrative regulation; and~~

~~3. Be dismissed or relocated from the residence if the person is found to have a disqualifying background check result.~~

~~(3) To assure timely processing of background checks and organize background checks of existing child care staff members, the cabinet shall prioritize the processing of background checks for an individual who is a:~~

~~(a) New hire on or after April 1, 2018; or~~

~~(b) Child care staff member before January 1, 2018, using the following schedule:~~

Background Check Submission and Fingerprinting Month	Renewal Month of the Child Care Provider's License, Certification, or Registration
March 2018	June, July
April 2018	August
May 2018	September or October
June 2018	November or December
July or August 2018	January, February, or March
September 2018	April or May

~~(4) A current or prospective child care staff member shall be subject to background checks in accordance with Sections 4 and 5 of this administrative regulation at intervals pursuant to 45 C.F.R. 98.43(d).~~

~~(5) This administrative regulation shall govern a pilot of child care staff member's background check that shall:~~

~~(a) Commence in 2018; and~~

~~(b) Include volunteer child care providers representing differing provider types and geographical areas of the state.]~~

Section 4. Procedures and Payments. (1) To initiate the process for obtaining background checks on a prospective child care staff member, the child care provider shall:

(a) Request ~~[that]~~ the prospective child care staff member provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the prospective child care staff member;

(b) Request ~~[that]~~ the prospective child care staff member complete and sign the:

1. DCC-500, Applicant Child Care Staff Member Waiver Agreement and Statement; and

2. DCC-501, Disclosures to Be Provided to and Signed by the Applicant Child Care Staff Member; and

(c) Log on to the NBCP portal and enter the prospective child care staff member's demographic information for a check of the:

1. Child abuse and neglect central registry pursuant to 922

KAR 1:470;

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

3. Sex Offender Registry established in accordance with KRS 17.500 through 17.580.

(2)(a) In accordance with KRS 199.8965(8), 336.220, and 45 C.F.R. 98.43(f), a child care provider shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If a child care staff member's rap back has not expired, a new fingerprint check shall not be needed.

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

(3) To the extent funds are available, the cabinet:

~~(a) Race to the Top-Early Learning Challenge Grant in accordance with Pub. L. 112-10 shall cover the cost of background checks performed in accordance with subsection (1) of this section until close of the grant or exhaustion of grant funds, whichever occurs first; or~~

~~(b) Cabinet] shall absorb, in whole or in part, fees using funding in accordance with 42 U.S.C. 9857-9858q.~~

(4)(a) Upon submission of payment in accordance with subsections (2) and (3) of this section, the child care ~~[provider shall print a copy of the DCC-504, Applicant Child Care Staff Member Live Scan Fingerprinting Form, from the NBCP portal and provide the form to the child care staff member.~~

~~(b) The child care] staff member shall:~~

~~(a) [4.] Have no more than thirty (30) [ninety (90)] calendar days from the date of payment pursuant to subsections (2) and (3) of this section to submit his or her [the child care staff member's] fingerprints at an authorized collection site for NBCP; and~~

~~(b) [2.] Present his or her [the DCC-504 and] driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.~~

(5) Upon completion of the background checks in accordance with this section and Section 5 of this administrative regulation, the cabinet:

(a) Shall provide notice to the child care provider in accordance with 45 C.F.R. 98.43(e) that the prospective child care staff member is:

1. Eligible for hire; or

2. Not eligible for hire if the prospective child care staff member is found by the cabinet to have a disqualifying background check result in accordance with Section 6 of this administrative regulation;

(b) May release any record of state criminal history found in the files of the Kentucky centralized criminal history record information system to the child care provider or another entity provided on the waiver in accordance with subsection (1)(b) of this section; and

(c) Shall, upon receipt of written request from an applicant, send a copy of a KSP or FBI criminal history report to the prospective child care staff member by certified mail, restricted delivery service. The prospective child care staff member shall show proof of identity and sign to receive his or her criminal history report from the local post office.

(6) A child care provider shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (5)(a) of this section.

(7) A child care staff member may submit a request for a protection and permanency record in accordance with 922 KAR 1:510.

(8)(a) If the NBCP portal is not operational, the cabinet may request a federal waiver that would allow a prospective staff member to undergo a:

1. Child abuse and neglect central registry check pursuant to

922 KAR 1:470:

2. Criminal records check conducted by the Kentucky Justice and Public Safety Cabinet or Administrative Office of the Courts;

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

4. Sex Offender Registry check in accordance with KRS 17.500 through 17.580.

(b) A background check completed through the NBCP portal shall be required as soon as operational.

Section 5. Checks of Other States. (1) In accordance with 45 C.F.R. 98.43(b)(3), a prospective child care staff member who resides in or has resided in another state within the last five (5) years shall:

(a) Request from each state of current or prior residency, in accordance with the state's laws, policies, and procedures, with a courtesy notice to the cabinet:

1. An in-state criminal records check by:
 - a. Means of fingerprints for the state of residence; or
 - b. Any means accepted by a state of prior residency;
2. A check of the state's sex offender registry or repository; and

3. A check of the state-based child abuse and neglect registry and database; and

(b) Direct results of the checks required in paragraph (a) of this subsection to the Department for Community Based Services, Division of Child Care, 275 East Main Street, 3C-F, Frankfort, Kentucky 40621[40604], or securely send results to CHFSDCCNBCP@ky.gov.

(2) If the prospective child care staff member's current or prior state of residency participates in the FBI's National Fingerprint File Program, a prospective child care staff member shall be exempt from the requirements of subsection (1)(a)1. of this section.

(3) In accordance with KRS 336.220, a child care provider shall pay any fee charged by another state for a background check as permitted pursuant to 45 C.F.R. 98.43(f) for a prospective child care staff member.

(4) If another state fails to respond to a check submitted in accordance with subsection (1) of this section within thirty (30) calendar days from the date of the background ~~check~~[~~check's~~] request as verified by the child care staff member, the cabinet shall:

(a) Process a child care staff member's background checks and issue notice to the child care provider in accordance with Section 4(5) of this administrative regulation to ensure compliance with 45 C.F.R. 98.43(e); and

(b) Send notice in accordance with Section 4(5) of this administrative regulation if:

1. Another state provides requested background check results at a later date; and
2. A disqualifying background check result is identified.

(5) A child abuse and neglect central registry check in accordance with 922 KAR 1:470 may be requested by a:

- (a) Parent or legal guardian in accordance with KRS 199.466; or
- (b) Child care staff member in another state.

Section 6. Disqualifying Background Check Results. (1) Unless a rehabilitative review pursuant to Section 9 of the administrative regulation determines the individual is eligible to be hired, an individual shall be ineligible to:

(a) Be hired or otherwise serve as a child care staff member if the individual:

1. Meets a criterion specified in 45 C.F.R. 98.43(c);
2. Has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to[.];
 - a. A drug-related felony, and five (5) years has not elapsed since the person was fully discharged from imprisonment, probation, or parole;

- b. A sex or violent crime pursuant to KRS 17.165; [or]
- c. A felony offense under:

- (i) KRS Chapter 209, protection of adults;
- (ii) KRS Chapter 506, inchoate offenses;

(iii)[(##)] KRS Chapter 511, burglary and related offenses;

(iv)[(###)] KRS Chapter 515, robbery;

(v)[(iv)] KRS Chapter 520, escape and other offense related to custody;

(vi)[(v)] KRS Chapter 525, riot, disorderly conduct, and related ~~offense~~[~~offenses~~];

(vii)[(vi)] KRS Chapter 527, ~~offenses~~[~~offense~~] relating to firearms and weapons;

(viii)[(vii)] KRS Chapter 529, prostitution offenses; or

(ix) KRS Chapter 530, family offenses, excluding KRS 530.050; or

d. A misdemeanor offense under:

(i) KRS 525.130, cruelty to animals in the second degree - exemptions - offense involving equines; or

(ii) KRS 525.135, torture of dog or cat;

3. Is listed on:

a. The central registry established in accordance with 922 KAR 1:470; or

b. Another state's state-based child abuse and neglect registry or database;

4. Has been convicted of, or has entered an Alford plea, plea of guilty, or a plea of nolo contendere to, an offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph;

5. Has an open warrant for a disqualifying offense established in this paragraph; or

6. [~~Has a criminal background check result indicating that the individual should be approached with caution by authorities; or~~

7.] Has a pending charge for a criminal offense specified in this paragraph; or

(b) Serve as a child-care ~~provider's~~[~~center's~~] applicant, licensee, administrative staff, or director if the individual has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to, a felony offense involving fraud, embezzlement, theft, or forgery.

(2) An individual who has received a pardon for a disqualifying offense, has had the record expunged, or has evidenced dismissal of a warrant or disqualifying charge may serve as a child care staff member.

(3) Unless there is a pending informal review, rehabilitative review, or appeal in accordance with Section 7 of this administrative regulation, a child care provider shall be ineligible for the Child Care Assistance Program and shall be subject to a cabinet action against the child care provider's license in accordance with 922 KAR 2:090, certification in accordance with 922 KAR 2:100, or registration in accordance with 922 KAR 2:180, if the child care provider:

(a) Employs a child care staff member who is ineligible for employment under subsections (1) and (2) of this section; or

(b) Is a registered child care provider, certified family child-care home, or Type II licensed child-care center and includes an adult household member who has a disqualifying background check result in accordance with subsections (1)(a) and (2) of this section.

Section 7. Notice of a Disqualifying Background Check Result and Appeals. (1) The cabinet shall notify each prospective or current child care staff member determined to have a disqualifying background check result in accordance with Section 6 of this administrative regulation.

(2) In addition to the cabinet's notification in accordance with subsection (1) of this section, a child care provider that receives notice from the cabinet that a prospective or current child care staff member has been determined to have a disqualifying background check result in accordance with Section 6 of this administrative regulation shall notify the child care staff member of the cabinet's determination within three (3) business days of receipt of the notice.

(3) Pursuant to 45 C.F.R. 98.43(e)(3), a prospective or current child care staff member who receives notice of having a disqualifying background check result in accordance with Section 6 of this administrative regulation may:

(a) Challenge the accuracy of the cabinet's determination by submitting a written request for informal review, including any

information the individual wishes to be considered, to the Department for Community Based Services, Division of Child Care, 275 East Main Street, 3C-F, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice in accordance with subsection (1) of this section; or

(b) Request a rehabilitative review pursuant to Section 9 of this administrative regulation.

(4) Upon completion of an informal review upon request pursuant to subsection (3)(a) of this section, the cabinet shall provide written notice of the cabinet's decision to uphold or rescind the notice of disqualifying background check result to the prospective or current child care staff member.

(5) A prospective or current child care staff member may appeal the results of an informal review or a rehabilitative review pursuant to Section 9 of this administrative regulation and 45 C.F.R. 98.43(e)(3), in accordance with 922 KAR 2:260.

(6) If a prospective or current child care staff member wishes to challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(7) If a prospective or current child care staff member challenges the finding that he or she is the true subject of the results from a registry or repository check, the cabinet shall refer the individual to the agency responsible for maintaining the registry or repository.

Section 8. Termination or Relocation of a Child Care Staff Member upon Receipt of Notice of a Disqualifying Background Check Result. (1) If a prospective or current child care staff member has not requested an informal review or a rehabilitative review in accordance with Section 9 of this administrative regulation, the child care provider shall:

(a)1. Terminate the child care staff member no later than ten (10) calendar days after receipt of notice of the cabinet's determination, including the disqualifying background check result; or

2. Change residence of an adult household member in the child care provider's home no later than fifteen (15) calendar days after receipt of notice of the cabinet's determination, including disqualifying background check result; and

(b) Use the NBCP to provide electronic notification to the cabinet affirming the child care staff member's dismissal or household member's change in residence within three (3) business days of termination or residence change.

(2)(a) If a prospective or current child care staff member requests an informal review or a rehabilitative review in accordance with Section 9 of this administrative regulation, the child care provider:

1. May retain the child care staff member pending resolution of the informal review or rehabilitative review; and

2. Shall ensure that the child care staff member:

a. Is subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one contact with a child in care.

(b) A child care provider shall terminate the child care staff member or relocate the adult household member if the:

1. Informal review upholds the cabinet's determination of a disqualifying background check result, or the rehabilitative review committee does not grant a waiver; and

2. Child care staff member does not request an administrative hearing in accordance with Section 7(5) of this administrative regulation, in which the child care provider shall terminate the child care staff member or relocate the adult household member no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitative review.

(c) If a child care staff member requests an administrative hearing in accordance with Section 7(5) of this administrative regulation to appeal the decision from an informal review or rehabilitative review, the child care provider:

1. May retain the child care staff member pending the appeal's resolution if the child care staff member:

a. Remains subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one

contact with a child in care; and

2. Shall terminate the child care staff member or relocate the adult household member no later than the thirty-first calendar day from the issuance of the final order if the child care staff member or adult household member does not prevail.

(d) Using the NBCP, the child care provider shall provide electronic notification to the cabinet affirming the individual's dismissal or relocation within three (3) business days of the termination or relocation.

Section 9. Rehabilitative Review. (1)(a) A prospective or current child care staff member found to have a disqualifying background check result shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying background check result under the rehabilitative review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than ten (10) years prior to the date of the criminal background check;

2. Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of a child;

3. Registration as a sex offender under federal law or under the law of any state;

4. A sex or violent crime as defined by KRS 17.165; or

5. A child abuse and neglect substantiated finding that:

a. Occurred less than ~~seven (7)~~^{five (5)} years prior to the date of the registry check; or

b. Involved:

(i) Sex abuse or sex exploitation of a child;

(ii) A child fatality related to abuse or neglect;

(iii) A near fatality of a child related to abuse or neglect; or

(iv) The involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.

(2)(a) A prospective or current child care staff member may submit a written request for a rehabilitative review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 4(5) or 7(4) of this administrative regulation regarding a determination of a disqualifying background check result.

(b) If a prospective or current child care staff member requests a rehabilitative review, the child care staff member:

1. May be retained by the child care provider pending the rehabilitative review; and

2. Shall be subject to restrictions and termination or relocation in accordance with Section 8 of this administrative regulation.

(3) The request for a rehabilitative review shall include ~~the following information~~:

(a) A written explanation of each disqualifying background check result, including:

1. A description of the events related to the disqualifying background check result;

2. The number of years since the occurrence of the disqualifying background check result;

3. The age of the individual at the time of the disqualifying background check result; and

4. Any other circumstances surrounding the disqualifying background check result;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable;

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently; and

(e) Evidence that the individual has pursued or achieved rehabilitation with regard to a disqualifying background check result.

(4) A rehabilitative review shall be conducted by a committee of three (3) employees of the cabinet, none of whom ~~were~~^{was} responsible for determining that the individual has a disqualifying background check result.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying background check result;

(b) The lack of a relationship between the disqualifying background check result and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the disqualifying background check result.

(6) No later than thirty (30) calendar days from receipt of the written request for the rehabilitative review, the cabinet shall send the committee's determination on the rehabilitation waiver to the prospective or current child care staff member.

(7) The decision of the committee shall be subject to appeal in accordance with Section 7(5) of this administrative regulation.

(8) A child care provider shall not be obligated to accept an individual who is granted a waiver pursuant to this section as a child care staff member.

Section 10. Transparency. The cabinet shall maintain information concerning the background check processes in accordance with this administrative regulation on its Web site in accordance with 45 C.F.R. 98.43(g).

Section 11. Status of Employment. (1) A child care provider shall maintain the employment or residential status of each child care staff member who has submitted to a fingerprint-based criminal background check by reporting the status using the NBCP Web-based system.

(2) The cabinet shall inspect a child care provider to verify conformity with this administrative regulation.

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

(a) "DCC-500, Applicant Child Care Staff Member Waiver Agreement and Statement", ~~01/2022[12/2017]~~; and

(b) "DCC-501, Disclosures to Be Provided to and Signed by the Applicant Child Care Staff Member", ~~01/2022[12/2017]~~; and

(c) ~~"DCC-504, Applicant Child Care Staff Member Live Scan Fingerprinting Form", 12/2017].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amended After Comments)

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 198B.260, Chapter 209, 211.842-211.852, Chapter 214, 216.2970, 216B.010, 216B.015, 216B.040, 216B.042, 216B.0425(2), 216B.045, 216B.050, 216B.055, 216B.075, 216B.085, 216B.105-216B.125, 216B.140-216B.175, 216B.185, 216B.190, 216B.230-216B.239, 216B.250, 216B.400-216B.402, 216B.990, [219.011-219.084,] Chapter 310, 311.560, 311.992, Chapter 311B, 314.011(8), 314.042(8), [320.240(2),] 333.030, 446.400, Chapter 620, 29 C.F.R. 1910.1030(d)(2)(vii), 40 C.F.R. Part 403, 42 C.F.R. Part 405, 412.22[(e)], 412.92, 413.65, 482.12(c), ~~489.24[489.25]~~, Part 493, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2~~---~~1320d-8, 1395u(b)(18)(C), 1395x(r)(2)-(5), 1395dd

STATUTORY AUTHORITY: KRS 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the minimum licensure requirements for the operation of hospitals and the basic services provided by hospitals.

Section 1. Definitions. (1) "Accredited record technician" means an individual who:

(a) Has graduated from a program for medical record technicians that is accredited by the Council on Medical Education of the American Medical Association and the American Health Information Management Association; and

(b) Is certified as an accredited record technician by the American Health Information Management Association.

(2) "Governing authority" means the individual, agency, partnership, or corporation in which the ultimate responsibility and authority for the conduct of the health facility is vested.

(3) "Long-term acute inpatient hospital services" means acute inpatient services provided to patients whose average inpatient stay is greater than twenty-five (25) days.

(4) "Organ procurement agency" means a federally designated organization that coordinates and performs activities to encourage the donation of organs or tissues for transplantation.

(5) "Protective device" means a device designed to protect a person from falling, and may include:

- (a) Side rails;
- (b) A safety vest; or
- (c) A safety belt.

(6) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(7) "Registered health information administrator" means an individual who has obtained professional certification from the American Health Information Management Association.

(8) "Registered or registry-eligible dietician" means an individual who is licensed as a dietician in accordance with KRS Chapter 310.

(9) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 2. Requirements to Provide Services. A facility shall not be licensed as or hold itself out to be a hospital unless it provides:

- (1) The full range of services required by Section 4 of this administrative regulation; and
- (2) Treatment for a variety of illnesses.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for:

- 1. The management and operation of the hospital; and
- 2. Compliance with federal, state, and local law pertaining to its operation.

(b) The governing authority shall:

1. Appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority; and

2. Designate a mechanism for the annual performance review of the administrator.

(2) Administrator.

(a) The administrator shall:

- 1. Act as the chief executive officer;
- 2. Be responsible for the management of the hospital; and
- 3. Act as the liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through:

- 1. Reports; and
- 2. Attendance at meetings of the governing authority.

(c) The administrator shall:

1. Develop an organizational structure including lines of authority, responsibility, and communication; and

2. Organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of each subordinate to whom the administrator has assigned duties.

(e) The administrator shall:

- 1. Hold interdepartmental and departmental meetings as appropriate;
- 2. Attend or be represented at the meetings on a regular basis; and
- 3. Report to each department and to the governing authority the pertinent activities of the hospital.

(3) Administrative records.

(a) The hospital shall establish administrative records that reflect and guide the administrative operations of the hospital, including:

- 1. Minutes of the governing authority;
- 2. Financial records;
- 3. Personnel records; and
- 4. Employee health records.

(b) A hospital shall have discretion as to the form or content of any administrative record it establishes.

(c) The hospital shall maintain a:

- 1. Patient admission register;
- 2. Discharge register;
- 3. Birth register, if applicable; and
- 4. Surgical register, if applicable.

(d) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility that includes the lines of authority, responsibility, and communication, and departmental organization;

(b) The admission procedure to assure that a patient is admitted to the hospital in accordance with medical staff policy;

(c) Any constraint imposed on admissions by a limitation of:

- 1. Services;
 - 2. Physical facilities;
 - 3. Staff coverage; or
 - 4. Other relevant factor;
- (d) Financial requirements for patients on admission;
- (e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian, or legal representative for diagnostic or treatment procedures;

(g) Effective procedures for tracking incidents, including transfusion reactions, drug reactions, and medication errors that may occur in the facility. A hospital shall have discretion as to its process, and the procedures shall encourage statistical analysis to inform process improvement activities;

(h) Procedures for meeting the requirements of KRS Chapter 214 and 902 KAR 2:020, including the reporting of:

1. Notifiable infectious conditions;
2. Notifiable non-infectious conditions;
3. Multi-drug resistant organisms;
4. Other reportable disease surveillance; and
5. Electronic laboratory reporting;[;]

(i) Use of restraints and a mechanism for monitoring and controlling the use of restraints;

(j) The internal transfer of a patient from one (1) level or type of care to another, if applicable;

(k) The discharge and termination of services;

(l) An organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency; [and]

(m) Policies that assure the reporting of cases of abuse, neglect, or exploitation of adults and children to the cabinet pursuant to KRS Chapters 209 and 620, including evidence that all allegations of abuse, neglect, or exploitation are thoroughly investigated internally to prevent further potential abuse while the investigation is in progress; and

(n) Policies that assure compliance with KRS 216B.165[the reporting and investigation of quality of care and safety problems in accordance with KRS 216B.165, including assurance that retaliatory action shall not be taken against a staff member who in good faith reports a patient care or safety problem].

(5) Patient identification. The hospital shall have a system for identifying each patient from the time of admission to discharge. For example, an identification bracelet imprinted with the following:

- (a) Name of patient;
 - (b) Hospital identification number;
 - (c) Date of admission; and
 - (d) Name of attending medical staff member.
- (6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure continuity of care for a patient who is:

1. Transferred to another health care facility; or
2. Discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall:

1. Coordinate the discharge of the patient with the patient and the person or agency responsible for the postdischarge care of the patient;

2. Provide pertinent information concerning postdischarge needs to the responsible person or agency, including the full range of qualified providers or appropriate support organizations in the community available to provide post-acute care services; and

3. Comply with the requirements established in KRS 216B.230 to 216B.239, which include providing each patient or the patient's legal guardian, if applicable, with at least one (1) opportunity to designate a lay caregiver.

(7) Transfer procedures and agreements.

(a) The hospital shall have a written patient transfer procedure and agreement with at least one (1) of each type of other health care facility able to provide a level of inpatient care not provided by the hospital.

(b) A hospital that does not have a transfer agreement in effect, but has documented a good faith effort to enter into an agreement, shall be in compliance with paragraph (a) of this subsection.

(c) A transfer procedure and agreement shall:

1. Specify the responsibilities each institution assumes in the transfer of a patient; and

2. Establish the hospital's responsibility for:

a. Notifying the receiving entity promptly of the impending transfer of a patient; and

b. Arranging for appropriate and safe transportation.

(d) If a patient is transferred to another health care facility or to the care of a home health agency:

1. A transfer form containing the following information shall accompany the patient or be sent immediately to the other health care facility or home health agency:

a. Attending medical staff member's instructions for continuing care;

b. Current summary of the patient's medical record;

c. Information as to special supplies or equipment needed for patient care; and

d. Pertinent social information on the patient and family; and

2. A copy of the patient's signed discharge summary shall be forwarded to the health care facility or home health agency within thirty (30) days of the patient's discharge.

(e) If a patient is transferred to another licensed level of care within the same facility:

1. The history and physical examination report shall:

a. Be transferred to the other licensed level of care within the same hospital pursuant to KRS 216B.175(3); and

b. Serve to meet the history and physical examination requirement for the licensed level of care to which the patient has been transferred; and

2. The complete medical record or a current summary of the record shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority.

(b) The medical staff shall be responsible:

1. To the governing authority for the quality of medical care provided to the patients; and

2. For the ethical and professional practice of its members.

(c) The organized medical staff shall be composed of doctors of medicine or doctors of osteopathy.

(d) At the discretion of the hospital, the governing body may elect to include the following practitioners as eligible for appointment to the medical staff to provide only those services authorized within the practitioner's respective scope of practice:

1. A licensed practitioner described in 42 U.S.C. 1395x(r)(2) – (5); or

2. A licensed practitioner described in 42 U.S.C. 1395u(b)(18)(C).

(e) The governing body of a hospital shall not be required to open eligibility for medical staff appointment to any licensed practitioner in addition to doctors of medicine or doctors of osteopathy.

(f) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority that address the following:

1. Qualifications for medical staff membership, including licensure to practice in Kentucky in accordance with authorized scope of practice, except for graduate doctors of medicine or doctors of osteopathy in their first year of hospital training;

2.a. Responsibilities and duties of each category of medical staff membership the medical staff may choose to create, for example, active, associate, or courtesy;

b. Clinical privileges that may be possessed by medical staff members and allied health professionals;

c. Procedures for granting and withdrawing medical staff membership and clinical privileges; and

d. Procedures for reviewing credentials;

3. A mechanism for appeal of decisions adversely affecting medical staff membership or clinical privileges;

4. A method for the selection of officers of the medical staff;

5. Policy regarding the frequency of and attendance at meetings of the medical staff;

6. Authority to appoint committees to address areas of operation or clinical focus, which may include the following:

- a. Executive committee;
 - b. Credentials committee;
 - c. Medical audit committee;
 - d. Medical records committee;
 - e. Infection control committee;
 - f. Tissue committee;
 - g. Pharmacy and therapeutics committee;
 - h. Utilization review committee; or
 - i. Quality assurance committee; and
7. A policy requiring a member of the medical staff to sign a verbal order for diagnostic testing or treatment:
- a. As soon as possible after the order was given; or
 - b. If the patient was discharged prior to the order being authenticated, within thirty (30) days of the patient's discharge.
- (g) All licensed practitioners appointed to the medical staff shall:
- 1. Be privileged in accordance with and function under the policies or bylaws required by paragraph (f) of this subsection; and
 - 2. Comply with the hospital infection control and employee health policies.
- (9) Personnel. The hospital shall:
- (a) Employ a sufficient number of qualified personnel to provide effective patient care and other related services;
 - (b) Have written personnel policies and procedures available to hospital personnel;
 - (c) Have a written job description for each position subject to review and revision as necessary;
 - (d) Have an employee health program for the mutual protection of employees and patients, including provisions for preemployment medical examination and follow-up medical examination no less than every three (3) years thereafter for staff who serve patients;
 - (e) Have a tuberculosis infection control program;
 - (f) Comply with the tuberculosis testing requirements established for health care workers in 902 KAR 20:205; and
 - (g) Maintain the following information in each employee's personnel record:
 - 1. Name, address, Social Security number;
 - 2. Health record;
 - 3. Evidence of current registration, certification, or licensure;
 - 4. Record of training and experience; and
 - 5. Record of performance evaluation.
- (10) Physical and sanitary environment.
- (a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.
 - (b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas:
 - 1. Plant maintenance;
 - 2. Laundry operations; and
 - 3. Housekeeping.
 - (c) There shall be an infection control program charged with responsibility for investigating, controlling, and preventing infections in the hospital. A multidisciplinary infection control committee shall have oversight of the program. The program shall:
 - 1. Be directed by:
 - a. A certified infection control preventionist; or
 - b. An infection preventionist that has education or specialized training and experience necessary to be certified within two (2) years of employment;
 - 2. Have assigned administrative and professional staff to perform:
 - a. Infection control surveillance;
 - b. Investigation of cases and outbreaks;
 - c. Infection control training;
 - d. Reporting of diseases; and
 - e. Infection control collaborations with employee health services;
 - 3. Receive every report of an infection incident discovered by an employee; and
 - 4. Develop written infection control policies consistent with the Centers for Disease Control and Prevention guidelines.
 - (d) The infection control policies shall address the:

- 1. Prevention of disease transmission to and from patients, visitors, and employees, including:
 - a. Universal blood and body fluid precautions;
 - b. Precautions for infections that can be transmitted by the airborne route;
 - c. Work restrictions, including return to work policies for employees with infectious diseases;
 - d. Policies for vaccinating health care personnel or documenting immunity status for:
 - (i) Hepatitis B;
 - (ii) Influenza;
 - (iii) Measles;
 - (iv) Mumps;
 - (v) Rubella;
 - (vi) Pertussis; and
 - (vii) Varicella;
 - e. Policies for vaccinating health care personnel to prevent meningococcal disease, typhoid fever, or polio for personnel who have certain health conditions or are at risk for work-related exposure;
 - f. Handwashing and hand hygiene;
 - g. Antimicrobial stewardship; and
 - h. Reporting, investigating, and controlling outbreaks of healthcare-associated infections;
- 2. Use of environmental cultures. Culture testing results shall be recorded and reported to the Infection Control Committee; and
- 3. Cleaning, disinfection, and sterilization methods used for equipment and the environment.
- (e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections.
- (f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, and free from accumulations of dirt, rubbish, and foul, stale, or musty odors.
 - 1. An adequate number of housekeeping and maintenance personnel shall be provided.
 - 2. A written housekeeping procedure shall be:
 - a. Established for the cleaning of each area; and
 - b. Made available to personnel.
 - 3. Equipment and supplies shall be provided for cleaning of all surfaces. The equipment shall be maintained in a safe, sanitary condition.
 - 4. Hazardous cleaning solutions, compounds, and substances shall be:
 - a. Labeled;
 - b. Stored in closed metal containers; and
 - c. Kept separate from other cleaning materials.
 - 5. The facility shall be kept free from insects, rodents, and their nesting places, and entrances to their nesting places shall be eliminated.
 - 6. Garbage and trash shall be:
 - a. Stored in areas separate from those used for preparation and storage of food; and
 - b. Removed from the premises regularly.
 - 7. Trash containers shall be cleaned on a regular basis.
- (g) Sharp wastes.
 - 1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be:
 - a. Segregated from other wastes; and
 - b. Placed in puncture resistant containers immediately after use.
 - 2. A needle or other contaminated sharp shall not be purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vi).
 - 3. A sharp waste container shall be:
 - a. Incinerated on or off site; or
 - b. Rendered nonhazardous.
 - 4. Nondisposable sharps, such as large-bore needles or scissors, shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department, in accordance with 902 KAR 20:009, Section 22.
- (h) Disposable waste.

1. Disposable waste shall be:
 - a. Placed in a suitable bag or closed container to prevent leakage or spillage; and
 - b. Handled, stored, and disposed of to minimize direct exposure of personnel to waste materials.
 2. The hospital shall establish specific written policies regarding handling and disposal of waste material.
 3. The wastes identified in this subparagraph shall receive special handling.
 - a. Microbiology laboratory waste including a viral or bacterial culture, contaminated swab, or a specimen container or test tube used for microbiologic purposes shall be incinerated, autoclaved, or otherwise rendered nonhazardous.
 - b. Pathological waste including a tissue specimen from a surgical or necropsy procedure shall be incinerated.
 4. Blood, blood specimens, used blood tubes, or blood products shall be:
 - a. Disposed of by incineration;
 - b. Autoclaved before disposal; or
 - c. Carefully poured down a drain connected to a sanitary sewer, subject to limitations in subparagraph 5. of this paragraph.
 5. Wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment law, including 40 C.F.R. Part 403 and relevant local ordinances.
 6. An incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.
 - (i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.
 1. Linens shall be handled, stored, and processed to control the spread of infection.
 2. Clean linen and clothing shall be stored in a clean, dry, dust-free area designated exclusively for this purpose.
 3. An uncovered mobile cart may be used to distribute a daily supply of linen in patient care areas.
 4. Soiled linen and clothing shall be placed in a suitable bag or closed container to prevent leakage or spillage, and there shall be minimal handling of soiled linen to prevent generating further aerosols.
 5. Soiled linen shall be stored in an area separate from clean linen.
- (11) Medical and other patient records.
- (a) The hospital shall have a medical records service with administrative responsibility for medical records.
 - (b) A medical record shall be maintained in accordance with accepted professional principles for every patient admitted to the hospital or receiving outpatient services.
 1. The medical records service shall:
 - a. Be directed by:
 - (i) A registered health information administrator on a full-time, part-time, or consultative basis; or
 - (ii) An accredited record technician on a full-time or part-time basis; and
 - b. Have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.
 2. Medical records shall be retained for at least:
 - a. Six (6) years from date of discharge; or
 - b. If a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.
 3. A provision shall be made for written designation of the specific location for storage of medical records if the hospital ceases to operate because of disaster or for any other reason.
 4. The hospital shall be responsible for safeguarding the record and its informational content against loss, defacement, and tampering.
 5. Particular attention shall be given to protection from damage by fire or water.
 - (c) A system of identification and filing to assure the prompt location of a patient's medical record shall be maintained in accordance with the requirements of this paragraph.
 1. Index cards, if used, shall bear at least the patient's full name, birth date, and medical record number.
 2. There shall be a system for coordinating the inpatient and

- outpatient medical records of a patient whose admission is a result of, or related to, outpatient services.
3. Clinical information pertaining to inpatient and outpatient services shall be centralized in the patient's medical record.
 4. A hospital using automated data processing shall keep patient indices electronically or reproduced on paper and kept in books.
 - (d) Ownership.
 1. Medical records shall be the property of the hospital.
 2. The original medical record shall not be removed from the facility except by court order or subpoena.
 3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established by paragraph (e) of this subsection.
 - (e) Confidentiality and Security: Use and Disclosure.
 1. The hospital shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.
 2. The hospital may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.
 3. A hospital may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.
 - (f) Medical record contents shall be pertinent, current, and include the following:
 1. Identification data and signed consent forms, including name and address of next of kin, and of the person or agency responsible for patient;
 2. Date of admission, name of attending medical staff member, and allied health professional in accordance with subsection (8)(d)2. of this section;
 3. Chief complaint;
 4. Medical history including present illness, travel history, occupational history, past history, family history, and physical examination results;
 5. Report of special examinations or procedures, which may include consultations, clinical laboratory tests, x-ray interpretations, or EKG interpretations;
 6. Provisional diagnosis or reason for admission;
 7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member or other ordering personnel acting within the limits of his or her statutory scope of practice;
 8. Medical, surgical, or dental treatment notes and reports, signed and dated by a physician, dentist, licensed practitioner, or other ordering personnel acting within the limits of his or her statutory scope of practice if applicable, including records of all medication administered to the patient;
 9. Complete surgical record signed by the attending surgeon or oral surgeon, including the:
 - a. Anesthesia record signed by the anesthesiologist or an advanced practice registered nurse who is a certified registered nurse anesthetist;
 - b. Preoperative physical examination and diagnosis;
 - c. Description of operative procedures and findings;
 - d. Postoperative diagnosis; and
 - e. Tissue diagnosis by qualified pathologist on tissue surgically removed;
 10. Patient care plan that addresses the comprehensive care needs of the patient, including the coordination of the facility's service departments that have impact on patient care;
 11. Nurses' observations and progress notes of a physician, dentist, licensed practitioner, or other ordering personnel acting within the practitioner's statutory scope of practice;
 12. Record of temperature, blood pressure, pulse, and respiration;
 13. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American

Psychiatric Association's Diagnostic and Statistical Manual, if applicable;

14. Discharge summary, including:

- a. Condition of patient on discharge; and
- b. Date of discharge; and

15. In case of death:

a. Autopsy findings, if performed; and

b. An indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(g) Records shall be indexed according to disease, operation, and attending medical staff member using a recognized indexing system.

1. The disease and operative indices shall:

a. Use recognized nomenclature;

b. Include each specific disease diagnosed and each operative procedure performed; and

c. Include essential data on each patient having that particular condition.

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member.

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written protocol regarding organ procurement for transplant in consultation with an organ procurement agency.

(b) If a patient has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ or tissue donor.

(c) The hospital protocol shall include:

1. Criteria developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or the administrator's designee to notify the organ procurement agency of a potential organ donor; and

4. Procedures by which the patient's attending physician or designee shall document in the patient's medical record:

a. If the patient is a potential donor, that the organ procurement agency has been notified; or

b. The contraindications to donation.

(d) A patient with impending or declared brain death or cardiopulmonary death, as determined pursuant to KRS 446.400, shall not be a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) An attending medical staff member shall assume responsibility for diagnosis and care of his or her patient with respect to any medical or psychiatric problem that is present on admission or develops during hospitalization, subject to this paragraph:

1. If a patient is admitted by a practitioner identified in 42 C.F.R. 482.12(c)(4):

a. The patient shall be under the care of the practitioner for any condition that is specifically within the scope of practice of the practitioner as that scope is defined by the medical staff and permitted by state law; and

b. A doctor of medicine or doctor of osteopathy shall be responsible for care of the patient for any condition beyond the scope of the admitting practitioner's license.

2. a. Except as provided by clause b. of this subparagraph, if a patient is admitted by a licensed practitioner identified at 42 U.S.C. 1395u(b)(18)(C), a doctor of medicine or doctor of osteopathy shall be responsible for diagnosis and care of the patient.

b. If a non-Medicare patient is admitted by a certified nurse midwife, the patient shall be under the care of the certified nurse midwife for all services within that professional's scope of practice.

(c) Other qualified personnel may:

1. Complete medical histories;
2. Perform physical examinations; or
3. Record findings and compiler discharge summaries in accordance with the:

a. Practitioner's scope of practice; and

b. Hospital's protocols and bylaws.

(d) A complete history and physical examination shall be conducted according to the requirements of KRS 216B.175(2).

1. The history and physical examination shall include:

a. A description of the patient's chief complaint and the major reason for hospitalization;

b. A history of the patient's:

(i) Present illness;

(ii) Past illnesses;

(iii) Surgeries;

(iv) Medications;

(v) Allergies;

(vi) Social history;

(vii) Occupational history;

(viii) Travel history; and

(ix) Immunizations;

c. A review of the patient's anatomical systems and level of function at the time of the exam;

d. The patient's vital signs; and

e. A general observation of the patient's:

(i) Alertness;

(ii) Debilities; and

(iii) Emotional behavior.

2. The results of the history and physical examination shall be:

a. Recorded;

b. Reviewed for accuracy; and

c. Signed by the practitioner conducting the examination.

(e) The attending medical staff member shall:

1. State his or her final diagnosis;

2. Assure that the discharge summary is completed; and

3. Sign the records within thirty (30) calendar days following the patient's discharge.

(f) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(g) There shall be sufficient medical staff coverage for all clinical services of the hospital, in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice.

(b) A registered nurse with a bachelor of science degree in nursing shall serve as director of the nursing department.

(c) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital, in keeping with their size and scope of activity.

4. Persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(d) The hospital shall have written nursing care procedures and written nursing care plans for patients.

(e) Patient care shall be carried out in accordance with:

1. Attending medical staff member's orders;

2. Nursing process; and

3. Nursing care procedures.

(f) The nurse shall evaluate the patient using standard nursing procedure.

(g) A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

(h) Nursing notes shall be:

1. Written and signed on each shift by nursing staff rendering care to patients;
2. Descriptive of the nursing care given; and
3. Include information and observations of significance that contribute to the continuity of patient care.

(i) A medication shall be administered only by a:

1. Registered nurse;
2. Physician;
3. Dentist;
4. Physician's assistant;
5. Advanced practice registered nurse;
6. Licensed practical nurse under the supervision of a registered nurse;
7. Paramedic acting within his or her statutory scope of practice and in accordance with the hospital's operating policies and procedures; or
8. Nurse extern in accordance with 201 KAR 20:400.

(j) Except in a circumstance that requires a verbal order, a medication, diagnostic test, or treatment shall not be given without a written order signed by a physician, dentist, licensed practitioner, or other ordering personnel acting within his or her statutory scope of practice.

(k) A verbal order for a medication shall be:

1. Given only to a licensed practical or registered nurse, paramedic, or pharmacist; and
2. Signed by a member of the medical staff or other ordering practitioner as soon as possible after the order was given, or if the patient was discharged prior to the order being authenticated, within thirty (30) calendar days of the patient's discharge.

(l) A verbal order for a diagnostic test or treatment order may be given to a licensed practitioner acting within his or her statutory scope of practice and the hospital's protocols.

(m) A person receiving a verbal order for medication, a diagnostic test, or treatment shall, at the time the order is received:

1. Immediately transcribe the order;
2. Repeat the order to the person issuing the order; and
3. Annotate the order on the patient's medical record, as repeated and verified.

(n) A patient restraint or protective device, other than bed rails, shall not be used except:

1. In an emergency until the attending medical staff member can be contacted; or
2. Upon a written or telephone order of the attending medical staff member.

(o) If a patient restraint is necessary, the least restrictive form of protective device shall be used that affords the patient the greatest possible degree of mobility and protection.

(p) A locking restraint shall not be used under any circumstances.

(q) Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, infection control, employee health policies, and administrative policies.

(r) Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department organized, directed, and staffed to provide quality food service and optimal nutritional care.

(b) The dietary department shall be directed on a full-time basis by an individual who by education, or specialized training and experience, shall be knowledgeable in food service management.

(c) The dietary service shall have at least one (1) registered or registry-eligible dietician working full-time, part-time, or on a consultative basis to supervise the nutritional aspects of patient care.

(d) Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

(e) The dietary department shall have current written policies and procedures for food storage, handling, and preparation.

(f) Written dietary policy and procedure shall be available to dietary personnel.

(g) An in-service training program that includes the proper

handling of food, safety, and personal grooming shall be given at least quarterly for new dietary employees.

(h) Menus shall be planned, written, and rotated to avoid repetition.

(i) Nutritional needs shall be met in accordance with:

1. Recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences; and

2. The medical staff member's orders.

(j) Each meal shall correspond with the posted menu.

(k) If a change is necessary, substitution shall provide equal nutritive value and the change shall be recorded on the menu.

(l) Each menu shall be kept on file for thirty (30) calendar days.

(m) Every diet, regular or therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member or other ordering personnel acting within his or her statutory scope of practice.

(n) Information on the diet order shall be specific and complete and include:

1. The title of the diet;

2. Modifications in specific nutrients stating the amount to be allowed in the diet; and

3. Specific problems that may affect the diet or eating habits.

(o) Food shall be:

1. Prepared by methods that conserve nutritive value, flavor, and appearance;

2. Served at the proper temperatures; and

3. Prepared in a form such as cut, chopped, or ground to meet individual needs.

(p) If a patient refuses foods served, a nutritious substitution shall be offered.

(q) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member.

(r) Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(s) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(t) There shall be an identification system for patient trays and methods used to assure that each patient receives the appropriate diet as ordered.

(u) The hospital shall comply with all applicable provisions of [KRS 219.011 to KRS 219.084 and] 902 KAR 45:005, the Kentucky food code.

(4) Laboratory services.

(a) The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities, and equipment to perform services commensurate with the hospital's needs for its patients.

(b) Anatomical pathology services and blood bank services shall be available in the hospital or by arrangement with other facilities.

1. Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope, and nature of the hospital.

a. Equipment necessary to perform the basic tests shall be provided by the hospital.

b. Equipment shall be in good working order, routinely checked, and precise in terms of calibration.

c. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, immunology, and immunohematology.

d. Services may be provided through arrangement with another licensed hospital that has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to 42 C.F.R. Part 493, KRS 333.030, and relevant administrative regulations.

e. The original report from a test performed by an outside laboratory shall be contained in the patient's medical record.

f. Laboratory facilities and services shall be available at all times.

g. Emergency laboratory services shall be available twenty-

four (24) hours a day, seven (7) days a week, including holidays, in the hospital or through arrangement as specified in clause d. of this subparagraph.

h. The conditions, procedures, and availability of a service performed by an outside laboratory shall be in writing and available in the hospital.

i. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists, and technicians to perform promptly and proficiently the tests requested of the laboratory.

j. The laboratory shall not perform a procedure or test outside the scope of training of the laboratory personnel.

k. Laboratory services shall be under the direction of a:

(i) Pathologist;

(ii) Doctor of medicine or osteopathy with training and experience in clinical laboratory services; or

(iii) Laboratory specialist with a doctoral degree in physical, chemical, or biological sciences, and training and experience in clinical laboratory services.

l. A report of each laboratory service provided shall be filed with the patient's medical record.

(i) A duplicate copy shall be kept in the department.

(ii) Each request for a laboratory test shall be ordered and signed by qualified personnel in accordance with his or her scope of practice and the hospital's protocols and bylaws.

2. Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital, either in the hospital or under arrangement as specified in subparagraph 1.d. of this paragraph.

a. Anatomical pathology services shall be under the direct supervision of a pathologist full-time, part-time, or on a consultative basis.

b. If the supervision is provided on a consultative basis, the hospital shall provide for at least monthly consultative visits by a pathologist.

c. The pathologist shall participate in staff, departmental, and clinicopathologic conference.

d. The pathologist shall be responsible for establishing the qualifications of staff and in-service training.

e. Except for exclusions listed in written policies of the medical staff, tissues removed at surgery shall be examined macroscopically, and if necessary, microscopically by the pathologist.

f. A list of tissues that do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

g. A tissue file shall be maintained in the hospital.

h. In the absence of a pathologist, there shall be an established plan for sending tissue to a pathologist outside the hospital if examination is required.

i. A signed report of a tissue examination shall be filed promptly with the patient's medical record.

j. A duplicate copy shall be kept in the department.

k. Each report of a macroscopic or microscopic examination performed shall be signed by the pathologist.

l. Examination results shall be filed promptly in the patient's medical record.

m. The medical staff member requesting the examination shall be notified promptly.

n. A duplicate copy of each examination report shall be filed in the laboratory in a manner that permits ready identification and accessibility.

3. The laboratory shall meet the proficiency testing and quality control provisions in accordance with the certification requirements of 42 C.F.R. Part 493.

4. Blood bank. Facilities for procurement, safekeeping, and transfusion of blood and blood products shall be provided or shall be readily available.

a. The hospital shall maintain proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

b. For emergency situations, the hospital shall:

(i) Maintain at least a minimum blood supply in the hospital at all times; and

(ii) Be able to obtain blood quickly from community blood banks or institutions.

c. If the hospital provides donor services, the hospital shall have an up-to-date list of donors and equipment necessary to obtain blood.

d. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer, and availability of blood products between the hospital and donor center.

e. There shall be a provision for:

(i) Prompt blood typing and cross-matching; and

(ii) Laboratory investigation of transfusion reactions, either through the hospital or by arrangement with others on a continuous basis, under the supervision of a physician.

f. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be:

(i) Regularly inspected and tested; and

(ii) Safe and adequate. Inspections of the alarm system shall be documented.

g. Records shall be kept on file indicating the receipt and disposition of blood provided to patients in the hospital.

h. A committee of the medical staff, or its equivalent, shall:

(i) Review transfusions of blood or blood derivatives; and

(ii) Make recommendations concerning policies governing transfusion practices.

i. Samples of each unit of blood used at the hospital shall be retained for further testing if there was an adverse reaction.

j. Blood not retained that has exceeded its expiration date shall be disposed of promptly.

k. The review committee shall:

(i) Investigate each transfusion reaction occurring in the hospital; and

(ii) Make recommendations to the medical staff regarding improvement in transfusion procedure.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distribution of pharmaceuticals in accordance with state and federal law.

(b) A hospital that maintains a pharmacy for compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

(c) The pharmacist shall be responsible for supervising and coordinating the activities of the pharmacy department.

(d) Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

(e) A hospital that does not maintain a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies, and equipment.

1. Prescription medications shall be dispensed by a registered pharmacist elsewhere.

2. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

(f) The consulting pharmacist shall assist in drawing up correct procedures and directions for the distribution of drugs.

(g) The consulting pharmacist shall visit the hospital on a regularly scheduled basis in the course of his or her duties.

(h) The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(i) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records if indicated.

(j) The pharmacy shall establish and maintain a system of records and bookkeeping in accordance with accounting procedures and policies of the hospital for:

1. Maintaining adequate control over the requisitioning and dispensing of drugs and drug supplies; and

2. Charging patients for drugs and pharmaceutical supplies.

(k) A record of the stock on hand and of the dispensing of every controlled substance shall be maintained to ensure that the disposition of any particular item may be readily traced.

(l) The medical staff in cooperation with the pharmacist and

other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the original order or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for, and disposition of, unused medications or special prescriptions returned to the pharmacy if:

a. The patient is discharged; or

b. The medication or prescription does not meet requirements for sterility or labeling;

5. Emergency pharmaceutical services; and

6. Reporting adverse medication reactions to the:

a. Appropriate committee of the medical staff; and

b. Food and Drug Administration MedWatch Program.

(m) Therapeutic ingredients of medications dispensed shall be favorably evaluated in the:

1. United States Pharmacopoeia;

2. National Formulary; or

3. United States Homeopath-Pharmacopoeia; Other necessary medication shall be approved for use by the appropriate committee of the medical staff.

(n) A pharmacist shall be responsible for determining specifications and choosing acceptable sources for drugs with approval of the appropriate committee of the medical staff.

(o) There shall be available a formulary or list of drugs accepted for use in the hospital, developed and amended as necessary by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have:

1. Diagnostic radiology facilities currently licensed or registered pursuant to KRS 211.842 to 211.852;

2. At least one (1) fixed diagnostic x-ray unit capable of general x-ray procedures;

3. A radiologist on at least a consulting basis to:

a. Function as medical director of the department; and

b. Interpret films requiring specialized knowledge for accurate reading; and

4. Personnel adequate to supervise and conduct services, including one (1) certified radiation operator who shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

(c) Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

(d) Radiologic services shall be performed only upon the written order of qualified personnel in accordance with the:

1. Professional's scope of practice; and

2. Hospital's protocols and bylaws.

(e) The written order shall contain a concise statement of the reason for the service or examination.

(f) Reports of interpretations shall be written or dictated and signed by the radiologist.

(g) Only an individual licensed pursuant to 201 KAR Chapter 46 and KRS Chapter 311B, under the direction of medical staff members, if necessary, shall use any x-ray apparatus or material. Uses include application, administration, and removal of:

1. Radioactive elements;

2. Disintegration products; and

3. Radioactive isotopes.

(h) An individual licensed pursuant to 201 KAR Chapter 46 and KRS Chapter 311B, under the direction of a physician, may administer medications allowed within:

1. The professional's scope of practice; and

2. Context of radiological services and procedures being performed.

(i) The radiology department shall be free of hazards for patients and personnel.

(j) Proper safety precautions shall be maintained against:

1. Fire and explosion hazards;

2. Electrical hazards; and

3. Radiation hazards.

(7) Physical restoration or rehabilitation service.

(a) If the hospital provides rehabilitation, work hardening, physical therapy, occupational therapy, audiology, or speech-language pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(b) A hospital that provides physical restoration or rehabilitation services shall provide individualized techniques intended to:

1. Achieve maximum physical function normal to the patient; and

2. Prevent unnecessary debilitation and immobilization.

(c) The hospital shall develop written policies and procedures for each rehabilitation service provided.

(d) The hospital shall designate a member of the medical staff to coordinate restorative services provided to patients in accordance with their needs.

(e) Therapeutic equipment shall be:

1. Adequate to meet the needs of the service; and

2. In good condition.

(f) Therapy services shall be provided only upon written orders of qualified personnel in accordance with the practitioner's scope of practice and according to the hospital's protocols and bylaws.

(g) Therapy services shall be provided by or under the supervision of a licensed therapist, on a full-time, part-time, or consultative basis.

(h) The hospital shall maintain a complete therapy record for each patient provided physical therapy services.

(i) The report shall be:

1. Signed by the therapist who prepared the report; and

2. Maintained in the patient's medical record.

(8) Emergency services.

(a) A hospital shall develop written procedures for emergency patient care, including a requirement for:

1. Each patient requesting emergency care to be evaluated by a registered nurse;

2. At least one (1) registered nurse on duty to perform patient evaluation; and

3. A physician to be on call.

(b) A patient who presents at the hospital for emergency services shall be triaged by a registered nurse or paramedic acting:

1. Within his or her scope of practice; and

2. In accordance with the hospital's formal operating policies and procedures.

(c) The medical staff of a hospital within an organized emergency department shall establish and maintain a manual of policy and procedures for emergency and nursing care provided in the emergency room.

(d) The emergency service shall be under the direction of a licensed physician.

(e) Medical staff members shall be available at all times for the emergency service, either on duty or on call.

(f) Current schedules and telephone numbers shall be posted in the emergency room.

(g) Nursing personnel shall be assigned to or designated to cover the emergency service at all times.

(h) Facilities shall be provided to assure prompt diagnosis and emergency treatment.

(i) A specific area of the hospital shall be utilized for patients requiring emergency care on arrival.

(j) The emergency area shall be:

1. Located in close proximity to an exterior entrance of the facility; and

2. Independent of the operating room suite.

(k) Diagnostic and treatment equipment, drugs, and supplies shall be:

1. Readily available for the provision of emergency services; and

2. Adequate in terms of the scope of services provided.

(l) Adequate medical records shall be:

1. Kept on every patient seen in the emergency room, under the supervision of the Medical Record Service; and

2. If appropriate, integrated with inpatient and outpatient records.

(m) Emergency room records shall include at least:

1. A log listing the patient visits to the emergency room in chronological order, including:

- a. Patient identification;
- b. Means of arrival;
- c. Person transporting patient; and
- d. Time of arrival;
2. History of present complaint and physical findings;
3. Laboratory and x-ray reports, if applicable;
4. Diagnosis;
5. Treatment ordered and details of treatment provided;
6. Patient disposition;
7. Record of referrals;
8. Instructions to the patient or family for those not admitted to the hospital; and

9. Signatures of attending medical staff member, and nurse if applicable.

(9) Outpatient services.

(a) A hospital with an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections or clinics, the number of which shall depend on the:

1. Size and degree of departmentalization of the medical staff;
2. Available facilities; and
3. Needs of the patients the outpatient department serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies, which may include:

1. Home health agencies;
2. The local health department;
3. Social and welfare agencies; and
4. Other outpatient departments.

(d) Each service offered by the outpatient department shall be under the direction of a:

1. Physician who shall be a member of the medical staff; or
2. Licensed healthcare practitioner qualified by education, experience, and specialized training related to the specific type of service under the practitioner's direction if the hospital has a separate director for each outpatient service.

(e) A registered nurse shall be responsible for the nursing services of the outpatient department.

(f) The number and type of other personnel employed shall be determined by the:

1. Volume and type of services provided; and
2. Type of patient served in the outpatient department.

(g) Necessary laboratory and other diagnostic tests shall be available through:

1. The hospital;
2. A laboratory in another licensed hospital; or
3. A laboratory licensed pursuant to KRS 333.030.

(h) Medical records shall be maintained and if appropriate, coordinated with other hospital medical records.

(i) The outpatient medical record shall be filed in a location that insures ready accessibility to the:

1. Medical staff members;
2. Nurses; and
3. Other personnel of the outpatient department.

(j) Information in the medical record shall be complete and sufficiently detailed relative to the patient's:

1. History;
2. Physical examination;
3. Laboratory and other diagnostic tests;
4. Diagnosis; and
5. Treatment.

(10) Surgery services.

(a) A hospital in which surgery is performed shall have an operating room and a recovery room supervised by a registered nurse qualified by training, experience, and ability to direct surgical nursing care.

(b) Sufficient surgical equipment, including suction facilities

and instruments in good repair, shall be provided to assure safe and aseptic treatment of surgical cases.

(c) If flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including:

1. Use of shoes with conductive soles; and
2. Prohibition of garments or other items of silk, wool, or synthetic fibers that accumulate static electricity.

(d) There shall be effective policies and procedures regarding:

1. Surgical staff privileges;
2. Functions of the service; ~~and~~
3. Evaluation of the surgical patient; ~~and~~
4. Surgical smoke safety and control. The smoke evacuation policy shall be available to staff in all areas where surgical smoke is generated.

(e)1. In accordance with KRS 216B.153, a hospital that utilizes an energy-generating device shall make use of a smoke evacuation system:

a. That effectively captures and neutralizes surgical smoke at the site of origin and before the smoke can make ocular contact or contact with the respiratory tract of the occupants of the room; and

b. During any surgical procedure that is likely to produce surgical smoke.

2. The cabinet shall impose fines in accordance with KRS 216B.990(8) for each violation of noncompliance with KRS 216B.153 only if the violation has not been remedied after the hospital has had an opportunity to correct the violation through the filing of a plan of correction in accordance with 902 KAR 20:008, Section 2(13).

(f) Surgical privileges shall be delineated for each member of the medical staff performing surgery in accordance with the competencies of each staff member.

(g)(f) A roster of medical staff specifying the surgical privileges of each shall be maintained.

(h)(g) Except in emergency, a surgical operation or other hazardous procedure shall be performed only on written consent of the patient or the patient's legal representative.

(i)(h) The operating room register shall:

1. Be complete and up to date; and
2. Include the following:
 - a. Patient's name;
 - b. Hospital room number;
 - c. Preoperative and postoperative diagnosis;
 - d. Complications, if any;
 - e. Names of:
 - (i) Surgeon;
 - (ii) First assistant;
 - (iii) Anesthesiologist or an advanced practice registered nurse who is a certified registered nurse anesthetist; and
 - (iv) Scrub and circulating nurse;
 - f. Operation performed; and
 - g. Type of anesthesia.

(j)(i) There shall be a complete history and physical workup in the chart of each patient prior to surgery.

(k)(j) If the history and workup has been transcribed, but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart.

(l)(k) The chart shall:

1. Accompany the patient to the operating suite; and
2. Be returned to the patient's floor or room after the operation.

(m)(l) An operative report describing the techniques and findings shall be:

1. Written or dictated immediately following surgery; and
2. Signed by the surgeon.

(n)(m) Tissues removed by surgery shall be:

1. Placed in suitable solutions;
2. Properly labeled; and
3. Submitted to the pathologist for macroscopic and, if necessary, microscopic examination.

(o)(n) An infection of a clean surgical case shall be recorded and reported to the Infection Control Program. The program shall investigate according to established procedures for investigation and review of surgical site infections.

VOLUME 48, NUMBER 12– JUNE 1, 2022

(p)[(e)] Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) A hospital that provides surgical or obstetrical services shall have anesthesia services available.

(b) Anesthesia services shall be organized under written policies and procedures regarding:

1. Staff privileges;
2. The administration of anesthetics; and
3. The maintenance of safety controls.

(c) A physician member of the medical staff shall be the medical director of anesthesia services.

(d) If possible, the director shall be a physician specializing in anesthesiology.

(e) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate an advanced practice registered nurse who is a certified registered nurse anesthetist qualified to administer anesthetics.

(f) A qualified medical staff member or licensed practitioner functioning within their scope of practice shall perform a preanesthetic physical examination for every patient requiring anesthesia services.

(g) The following shall be recorded within forty-eight (48) hours of surgery:

1. Findings of the preanesthetic physical examination;
2. An anesthetic record on a special form; and
3. A postanesthetic follow-up, with findings recorded by the:

a. Anesthesiologist; or

b. Advanced practice registered nurse who is a certified registered nurse anesthetist.

(h) The postanesthetic follow-up note shall:

1. Be written:

- a. Upon discharge from the postanesthesia recovery area; or
- b. Within three (3) to twenty-four (24) hours after the procedure requiring anesthesia; and

2. Include:

- a. Blood pressure and pulse measurements;
- b. Presence or absence of the swallowing reflex and cyanosis;
- c. Postoperative abnormalities or complications; and
- d. The patient's general condition.

(12) Obstetrics service.

(a) A hospital providing obstetrical care shall have:

1. Adequate space;
2. Necessary equipment and supplies; and
3. A sufficient number of nursing personnel to:

a. Assure safe and aseptic treatment of mothers and newborns; and

b. Provide protection from infection and cross-infection.

(b) The obstetrics service shall be under the:

1. Medical direction of a physician; and
2. Supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care.

(c) If a hospital has an obstetrical caseload that does not justify a separate nursing staff, the hospital's obstetrical nurses shall be designated and oriented to the specific needs of obstetrical patients.

(d) A registered nurse shall be on duty in the labor and delivery unit if a patient is in the unit.

(e) Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until the patient is transferred to the maternity unit.

(f) An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and for an obstetrical emergency.

(g) Patients in labor shall be cared for in adequately equipped labor rooms.

(h) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery[~~, in accordance with 902 KAR 4:020~~].

(i) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism and other inherited and congenital disorders.

(j) The hospital shall have a method and procedure for the positive associative identification of the mother and infant.

(k) The identifiers shall be placed on mother and newborn in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(l) An up-to-date register book of deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth, and weight;

2. Mother's full name, including maiden name, address, birthplace, and age at time of this birth;

3. Father's full name, birthplace, and age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(m) Each hospital providing maternity service shall provide a nursery not used for any other purpose.

(n) Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(o) A policy shall be established for:

1. A delivery occurring outside the delivery room; and

2. A patient with an infectious disease.

(p) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(q) The hospital shall comply with the provisions of KRS 214.175 by participating in surveys conducted by the cabinet for the purpose of determining the prevalence of alcohol or other substance abuse among pregnant women and newborn infants.

(r) The hospital shall comply with the provisions of KRS 216.2970 by providing an auditory screening for all newborn infants.

(13) Pediatric services.

(a) A hospital providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services.

(b) If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care.

(c) There shall be available beds and other equipment that are appropriate in size for pediatric patients.

(d) There shall be proper facilities and procedures for the isolation of children with infectious, contagious, or communicable conditions.

(e) At least one (1) patient room shall be available for isolation use.

(f) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(g) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience, and ability to direct effective pediatric nursing.

(h) Nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(i) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. A hospital with a psychiatric unit shall:

(a) Designate the location and number of beds to be licensed as psychiatric beds; and

(b) Meet the requirements of 902 KAR 20:180.

(15) Chemical dependency treatment services. A hospital providing chemical dependency treatment services shall:

(a) Meet the requirements of 902 KAR 20:160, Sections 3 and 4; and

(b) Designate the location and number of beds to be used for chemical dependency treatment services.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the

professional staff.

(c) If printed resources are used, the library collection shall be organized.

(d) The library collection may be composed of digital references, which shall be on line or accessible on a computer.

Section 5. Long-term Acute Inpatient Hospital Services. (1) A hospital licensed pursuant to this administrative regulation and seeking to qualify for available Title XVIII Medicare reimbursement may provide long-term acute inpatient hospital services pursuant to applicable federal law and in accordance with this section.

(2) The area of the hospital designated to provide long-term acute inpatient hospital services shall provide services in compliance with:

- (a) This administrative regulation; and
- (b) 42 C.F.R. 412.22.

(3) A hospital wishing to provide long-term acute inpatient hospital services shall request authorization from the Office of Inspector General, Cabinet for Health and Family Services.

(4) The Office of Inspector General shall conduct a survey to determine if the requirements of this section are met and notify the hospital of the survey results by letter.

Section 6. Optional Designations. A hospital shall be designated as a:

(1) Primary stroke center if the hospital meets the criteria established in KRS 216B.0425(2); or

(2) SANE-ready hospital if the hospital meets the criteria established in KRS 216B.401(1).

Section 7. Off-campus, Kentucky Hospital-Owned Freestanding Emergency Department (FSED). (1) A hospital licensed pursuant to this administrative regulation may provide off-campus emergency services in a hospital-owned FSED. For purposes of this section, "off-campus" shall mean a location:

(a) Off the campus of the parent hospital that owns the FSED; and

(b) At least thirty-five (35) miles from an existing hospital that is:

- 1. Licensed pursuant to this administrative regulation; and
- 2. Designated as a sole community hospital pursuant to 42 C.F.R. 412.92.

(2) If a Kentucky-licensed hospital owns and operates an **ambulatory care clinic licensed under 902 KAR 20:073 prior to July 15, 2018, or holds a certificate of need for an ambulatory care clinic that is not licensed by that date, the hospital shall notify the cabinet no later than ninety (90) days from the effective date of this administrative regulation of the clinic's scope of operations. The hospital's notification shall inform the cabinet whether the clinic will:**

(a) Operate as an FSED, in which case the facility shall:

1. Provide emergency services in accordance with Section 4(8) of this administrative regulation;

2. Be designated as provider-based pursuant to 42 C.F.R. 413.65;

3. Not be required to obtain a new certificate of need; and

4. Obtain a separate license under 902 KAR Chapter 20 for any existing service provided under the ambulatory care clinic license and covered under Section IV of the State Health Plan without being subject to a separate certificate of need; or

(b) Provide[~~outpatient clinic that provides~~](ambulatory care clinic licensed under 902 KAR 20:073 prior to July 15, 2018, or holds a certificate of need for an ambulatory care clinic that is not licensed by that date, the hospital shall notify the cabinet no later than ninety (90) days from the effective date of this administrative regulation of the clinic's scope of operations. The hospital's notification shall inform the cabinet whether the clinic will:

(a) Operate as an FSED, in which case the facility shall:

1. Provide emergency services in accordance with Section 4(8) of this administrative regulation;

2. Be designated as provider-based pursuant to 42 C.F.R. 413.65;

3. Not be required to obtain a new certificate of need; and

~~4. Obtain a separate license under 902 KAR Chapter 20 for any existing service provided under the ambulatory care clinic license and covered under Section IV of the State Health Plan without being subject to a separate certificate of need; or~~

~~(b) Provide] services that are limited to treatment for minor injury or illness, in which case[in which case] the clinic shall not hold itself out to the public as an emergency treatment center or use similar terminology that expresses or implies that emergency medical service is offered at the clinic. This ~~paragraph~~[~~subsection~~] shall not prohibit the clinic from holding itself out to the public as an urgent treatment center.~~

(3) A Kentucky-licensed hospital that seeks to establish an FSED **under circumstances not covered under subsection (2)(a) of this section**[~~under circumstances not covered under subsection (2)(a) of this section~~] shall obtain a certificate of need.

(4) An FSED shall:

(a) Be owned by an accredited Kentucky hospital licensed under this administrative regulation;

(b) Be included under the same license and accreditation as the parent hospital;

(c) Meet the requirements of and be certified by the Centers for Medicare and Medicaid Services as a provider-based entity under 42 C.F.R. 413.65;

(d) Pay a fee in the amount of \$1,000 for the FSED location at the time of annual renewal of the hospital's license;

(e) Operate twenty-four (24) hours per day, seven (7) days per week;

(f) Comply with the provisions of Section 4(8) of this administrative regulation governing emergency services;

(g) Be under the direction of a licensed physician who is a member of the parent hospital's organized medical staff;

(h) Ensure that nursing personnel are assigned to or designated to cover the emergency service at all times;

(i) Comply with the Emergency Medical Treatment and Labor Act (42 U.S.C. 1395dd) and 42 C.F.R. 489.24;

(j) Have facilities sufficient to assure prompt diagnosis, treatment, and stabilization of injuries and trauma;

(k) Have a written patient transportation agreement with a local emergency medical services (EMS) provider; and

(l) Maintain compliance with applicable federal, state, and local laws.

(5) An FSED shall cease to operate under this administrative regulation if the:

(a) Cabinet finds that there has been substantial failure by the facility to comply with the provisions of KRS Chapter 216B or this administrative regulation; and

(b) Facility fails to submit and implement an acceptable plan of correction or amended plan of correction in accordance with 902 KAR 20:008, Section 2(13).

(6) If an FSED receives notice to cease operations in accordance with subsection (5) of this section, the parent hospital may file a request in writing for a hearing pursuant to KRS 216B.105.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 6, 2022

FILED WITH LRC: May 11, 2022 at 1:45 p.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: Kara Daniel; Stephanie Brammer-Barnes; Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by hospitals.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary to comply with KRS 216B.042(1), which requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing the minimum licensure requirements for the operation of and services provided by hospitals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements for the operation of and services provided by 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: This amendment is required by KRS 216B.153, a new law created by the passage of SB 38 from the 2021 session of the Kentucky General Assembly. KRS 216B.153(2) directs the cabinet to promulgate administrative regulations to require a health facility that utilizes energy generating devices to make use of a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke.

In addition, this amended after comments regulation modifies the wording of the cross-reference to KRS 216B.165 in Section 3(4)(n) and restores the language of Section 7(2) and (3) in accordance with requests submitted to the cabinet during the public comment period.

(b) The necessity of the amendment to this administrative regulation: This amendment is required by KRS 216B.153.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.153 by creating a requirement for hospitals to make use of a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke.

(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 adding a requirement for the use of surgical smoke evacuation systems pursuant to KRS 216B.153.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects hospitals that provide surgical procedures that are likely to produce surgical smoke. There are currently 69 acute care hospitals licensed in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hospitals will be required to make use of a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). If a hospital does not currently have a smoke evacuation system as defined by KRS 216B.153(1)(b), the facility will incur costs associated with the purchase of a system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Surgical smoke generated by the use of an energy-generating device during a surgical procedure contains toxic and biohazardous substances that present risks to perioperative team members and patients. Therefore, the use of smoke evacuation equipment required by this amendment will protect health care workers and patients from the harmful effects of surgical smoke.

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

(a) Initially: There are no additional costs to the Office of

Inspector General for implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal funds 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: No increase in fees or funding is necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all hospitals regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects Kentucky-licensed hospitals. This administrative regulation also impacts the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042, 216B.153

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Although KRS 216B.990(8) authorizes the cabinet to impose a fine ranging from \$100 to \$500 for each violation of KRS 216B.153, the cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be collected.

(b) How 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 cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be collected.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment will not generate significant cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This amendment will not generate significant cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? Although KRS 216B.990(8) authorizes the cabinet to impose a fine ranging from \$100 to \$500 for each violation of KRS 216B.153, the cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be incurred by the regulated entities. In addition, if a hospital does not currently have a smoke evacuation system as defined by KRS 216B.153(1)(b), the facility will incur costs associated with the purchase of a system.

(d) How much will it cost the regulated entities for subsequent years? Same response as provided in (4)(c) above.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will not have a major economic impact on hospitals.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 29 C.F.R. 1910.1030(d)(2)(vii), 40 C.F.R. Part 403, 42 C.F.R. Part 405, 412.22, 412.92, 413.65, 482.12(c), 489.24, Part 493, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 - 1320d-8, 1395u(b)(18)(C), 42 U.S.C. 1395x(r)(2) – (5), 1395dd

(2) State compliance standards. KRS 216B.042

(3) Minimum or uniform standards contained in the federal mandate. 29 C.F.R. 1910.1030(d)(2)(vii) establishes the prohibition against contaminated needles and other contaminated sharps from being bent, recapped, or removed except in certain limited situations. Shearing or breaking of contaminated needles is prohibited.

40 C.F.R. Part 403 implements sections of the Federal Water Pollution Control Act, which establishes responsibilities of federal, state, and local government, industry and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge.

42 C.F.R. Part 405 establishes the Medicare program.

42 C.F.R. 412.22 establishes rules for hospitals and hospital units that are excluded from prospective payment systems for inpatient services.

42 C.F.R. 412.92 establishes rules for classification as a sole community hospital.

42 C.F.R. 413.65 establishes rules for determination of provider-based status for payment purposes.

42 C.F.R. 482 establishes the Conditions of Participation that hospitals must meet to participate in the Medicare and Medicaid Programs. 42 C.F.R. 482.12(c)(1) establishes federal requirements for a hospital's governing body.

42 C.F.R. 489.24 requires hospitals with an emergency department to comply with the Emergency Medical Treatment and Labor Act (EMTALA).

42 C.F.R. 493 is the section of the federal regulations titled "Standards and Certification: Laboratory Requirements", issued by the Centers for Medicare and Medicaid Services to enact the Clinical Laboratory Improvement Amendments (CLIA) law that establishes quality standards for laboratory testing performed on specimens from humans, such as blood, body fluid, and tissue, for the purpose of diagnosis, prevention, or treatment of disease, or assessment of health.

45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information.

42 U.S.C. 1395x(r)(2) – (5) and 42 U.S.C. 1395u(b)(18)(C) are federal Medicare laws that describe what types of licensed practitioners may be appointed to the medical staff of a hospital.

42 U.S.C. 1395dd, the Emergency Medical Treatment and Labor Act, ensures public access to emergency services regardless of ability to pay.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose requirements that are more strict than federal laws or regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

(Amended After Comments)

902 KAR 20:106. Operation and services; ambulatory surgical center.

RELATES TO: KRS 211.842-211.852, 216B.015, ~~[216B.040, 216B.042, 216B.153, 216B.165, 216B.165, 216B.165(2), (3), 216B.990(1), (2), (8), 311.400, 311.571, 311.710-311.810, 313.010(9), 313.030, 313.040, 313.420,]~~ 314.041, 314.042, 314.051, 333.030, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2—1320d-8

STATUTORY AUTHORITY: KRS ~~[216B.040,]~~ 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1)(a) and (c) require the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function and to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the licensure requirements for the operation and services of ambulatory surgical centers.

Section 1. Definitions. (1) "Admission" means the time after completion of the registration process and at the first instance of rendering medical care to the patient on the day of the scheduled procedure as a part, or in anticipation, of a surgery.

(2) "Ambulatory surgical center" means a public or private institution that is:

(a) ~~Hospital-based~~[Hospital-based] or freestanding;

(b) Operated under the supervision of an organized medical staff; and

(c) Established, equipped, and operated primarily for the purpose of providing surgical services to patients not requiring hospitalization and[~~treatment of patients by surgery,~~] whose recovery under normal circumstances is not expected to [~~will not~~] require inpatient care.

(3) "Cabinet" is defined by KRS 216B.015(6)[(5)].

(4) "Center" means an ambulatory surgical center.

(5) "Licensee" means a person or business entity that has been issued and holds a valid ambulatory surgical center license from the cabinet[~~for Health and Family Services~~].

Section 2. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for operation of the center and for compliance with federal, state, and local laws and administrative regulations pertaining to operation of the center.

(b) The licensee shall develop written policies for the administration and operation of the center.

(c) Medical staff shall approve medical policies that include the following[-Policies shall include-]

1. Personnel practices and procedures that shall be readily[-These shall be] available to personnel;

2. Job descriptions for each level of personnel, including the authority, responsibilities, and actual work to be performed in each classification;

3. Written infection control measures governing[-Written

~~procedures shall govern~~ the use of aseptic techniques and procedures in all areas of the center;

4. Sterilization of supplies;

5. Disposal of patient waste and other potentially infectious materials;

6. Examination by a pathologist of tissues removed during surgery, including the identification of ~~Policies shall identify~~ tissues that [which] require examination and tissues that are exempted by the medical staff team from examination [which do not];

7. Procedures for consultation [instances in which consultations] with other physicians, dentists, or podiatrists based on a patient's medical needs[shall be required];

8. A list of surgical procedures ~~[which may be]~~ performed in the center;

9. The center's privileging process, including the granting and withdrawal of medical staff surgical privileges, and privileges for the administration of anesthetics, [and]

10. Arrangement for transportation of patients who require hospital care;

11. A surgical smoke safety and control policy that shall be available to staff in all areas where surgical smoke is generated; and

12. Policies that assure compliance with KRS 216B.165[the reporting and investigation of quality of care and safety problems in accordance with KRS 216B.165, including assurance that retaliatory action shall not be taken against a staff member who in good faith reports a patient care or safety problem].

(2) Personnel and administration.

(a) Administrator. The center shall have:

1. An administrator responsible for the daily [day-to-day] operation of the center; and

2. A similarly qualified staff person for delegation of responsibilities [for delegating that responsibility] in the administrator's absence.

(b) Current employee records shall be maintained and ~~[shall]~~ include:

1. A resume of the employee's training and experience;

2. Evidence of current licensure or registration, if required; and

3. Evaluation of the employee's performance, including a report of any adverse incident involving the employee[Reports of accidents occurring while the employee is on duty].

(c) Medical staff requirements. The center shall have an organized medical staff responsible for:

1. The quality of medical care provided in the center; ~~[and]~~

2. Oversight of ~~[for]~~ the ethical and professional practices of its members; and

3. Developing[-

1. The medical staff shall develop] the center's medical care policies.

~~(d)[2.]~~ Surgical procedures shall be performed by professionally qualified physicians, dentists, or podiatrists who:

1. Are legally authorized under their scope of practice to perform the procedures; [them] and

2. Have been granted clinical privileges by the center's [to perform the procedures by the center through its] medical staff or governing body.

~~(e)[(d)]~~ Pharmaceutical, radiology, or laboratory services provided directly by the center or through an agreement with another entity shall be provided under the direction of a licensed pharmacist, a physician specializing as a radiologist, or a physician specializing as a pathologist, respectively, on a full-time, part-time, or regular consultative basis.

~~(f)[(e)]~~ The center shall employ registered nurses on a full-time basis for patient care in the operating and postanesthesia recovery rooms.

~~(g)[(f)]~~ The center shall employ other nursing personnel, aides, and technicians as necessary [required] to meet the needs of the patients served by the center, including personnel ~~[to be]~~ responsible for supervision, indexing, and filing of medical records.

(3) A center shall not retain a patient longer than twenty-four

(24) hours from the time of admission to discharge.

(4) The center shall not provide obstetric ~~[have provisions for obstetrical]~~ deliveries.

(5) Physician coverage. A physician or a [the] practitioner that performs surgical procedures [the surgery] shall be present in the center until all patients have been discharged and have left the center.

(6) The center shall have a physician on the medical staff with admitting privileges at [in] a nearby hospital who is responsible for admitting patients in need of inpatient care.

(7) Medical records.

(a) Content. The center shall maintain a complete, comprehensive, accurate, and legible medical record for each patient. The [Adequate and complete medical records shall be prepared for all patients admitted to the surgical center. Notes shall be legibly written or typed and signed. A medical] record shall include the following information:

1. Name and address of the person [the] or agency responsible for the patient;

2. Patient identification data, including the patient's:

a. Name;

b. Address;

c. Age;

d. Sex; and

e. Marital status;

3. Date of admission and discharge;

4. Name of the referring and attending physician, dentist, or podiatrist[physicians', dentists' and podiatrists' names];

5. A medical history and physical evaluation that was performed and entered into the medical record no more than thirty (30) days prior to surgery;

6. A surgical consent form that has been signed by the patient or the patient's [his] legal representative prior to the surgical procedure;

7. All preoperative diagnostic studies and laboratory tests;

8. Special examinations, such as consultations, clinical, laboratory, and x-ray;

9. Nurses' notes;

10. Complete medical record signed by the operating surgeon, including:

a. Anesthesia record;

b. Preoperative diagnosis;

c. Operative procedures and findings;

d. Postoperative diagnosis;

e. Condition of patient upon discharge;

f. Postoperative instructions; and

g. If required, tissue diagnosis by a pathologist on specimens surgically removed;

11. Charts including records of temperature, pulse, respiration, and blood pressure; and

12. Medication record including:

a. Name of medication;

b. Dosage;

c. Date and time of administration;

d. Method of administration;

e. Name of prescribing physician, dentist, or podiatrist; ~~[and]~~

f. Name of person who administered the medication; and

g. Any allergies or abnormal drug reaction.

(b) Indexing. The center shall have a system of identification and filing to assure [Medical records shall be systematically filed for] ready access to a patient's record by authorized personnel.

(c) Ownership.

1. Medical records shall be the property of the center.

2. The original medical record shall not be removed from the center except by court order or subpoena.

3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established by paragraph (d) of this subsection.

(d) Confidentiality and Security: Use and Disclosure.

1. The center shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45

C.F.R. Part 164, or as provided by applicable federal or state law.

2. The center may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. A center may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(e) [Records of patients shall not be removed from the center's custody except in accordance with a court order or subpoena.] Medical records shall be made available if requested for inspection by a duly authorized representative [representatives] of the cabinet.

(f)[(e)] The attending physician, dentist, or podiatrist shall complete and sign a patient's [the] medical record [of the patient] as soon as practicable after discharge, but not to exceed ten (10) days.

(g)[(e)] 1. Orders for medication and treatment shall be dated, timed, and signed by the:

a. Prescribing physician, dentist, or podiatrist;[,] or

b. [the] Health care practitioner who receives the verbal order.

2. A verbal order [orders] shall be followed by a written order and signed [eountersigned] by the prescribing physician, dentist, or podiatrist within forty-eight (48) hours, except that a prescription for a [records for] Schedule II drug [drugs] shall be signed immediately.

3. A record of medication administered to the patient shall be included in the record and signed by the health care professional [person] administering the medication.

(h)[(f)] Retention of records. Medical records shall be retained for at least:

1. Six (6) years from the date of discharge; or

2. If [a minimum of five (5) years or, in the case of] a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(8) Bedrails shall be available for patients in the admitting and recovery units.

Section 3. Sanitary Environment. The [surgical] center shall provide a sanitary environment to avoid sources and transmission of infection[infections].

(1) An infection control committee composed of members of the medical and nursing staff shall be established and charged with responsibility for investigating, [be responsible for] controlling, and preventing infections in [within] the center.

(2) Nondisposable sterile supplies shall be reprocessed if the integrity of the pack has not been maintained.

(3) The center shall:

(a) Have suitable equipment for rapid and routine sterilization of supplies, utensils, and equipment; and

(b) Maintain a sterile storage area for the equipment to be kept [shall store them] in a clean, convenient, and orderly manner.

(4) Continuing education shall be provided to all [surgical] center personnel on the cause, effect, transmission, prevention, and elimination of infections.

Section 4. Surgical Services. (1) The center shall operate exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed twenty-four (24) hours following admission[provide treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care].

(2) The center shall have at least one (1) operating room.

(3) A patient shall be examined:

(a) By a physician, dentist, or podiatrist acting within the professional's scope of practice; and

(b) Immediately prior to surgery to evaluate risks pertaining to:

1. [the risk of] Anesthesia; and

2. [the risk of] The procedure to be performed.

(4) A registered nurse shall:

(a) Be available to circulate at all times; and

(b) Supervise each [The] operating room [rooms shall be

supervised by a registered nurse].

(5) The center shall have on file a list of all physicians, dentists, and podiatrists who have been granted [with] surgical privileges by the center's medical staff or governing body, including the scope of [at the center and] the privileges granted [assigned] to each practitioner[by the medical staff].

(6) The center shall maintain a complete and up-to-date operating room register.

(7) The following equipment shall be available in the center:

(a) Oxygen;

(b) Mechanical ventilatory assistance equipment including airways, manual breathing bag, and ventilator;

(c) Cardiac defibrillator;

(d) Cardiac monitoring equipment;

(e) Tracheostomy set;

(f) Laryngoscopes and endotracheal tubes;

(g) Suction equipment; and

(h) Emergency medical equipment and supplies specified by the medical staff.

(8)(a) In accordance with KRS 216B.153, a center that utilizes an energy-generating device shall make use of a smoke evacuation system:

1. That effectively captures and neutralizes surgical smoke at the site of origin and before the smoke can make ocular contact or contact with the respiratory tract of the occupants of the room; and

2. During any surgical procedure that is likely to produce surgical smoke.

(b) The cabinet shall impose fines in accordance with KRS 216B.990(8) for each violation of noncompliance with KRS 216B.153 only if the violation has not been remedied after the center has had an opportunity to correct the violation through the filing of a plan of correction in accordance with 902 KAR 20:008, Section 2(13).

(9) The center shall have arrangements for obtaining an adequate supply of blood in a timely manner to meet the center's needs.

(10)[(9)] A physician's, dentist's, or podiatrist's orders shall be in writing and signed by the physician, dentist, or podiatrist.

(11)[(40)] Except for cases requiring only local infiltration anesthetics, a physician anesthesiologist, a physician qualified to administer anesthesia, a dentist qualified to administer anesthesia, or a certified registered nurse anesthetist [acting under the direction of the operating surgeon] shall administer the anesthetics and remain present during the surgical procedures and until the patient is fully recovered from the anesthetics.

(12)(a)[(44)] The physician, dentist, or podiatrist in charge of the patient shall be responsible for seeing that tissue removed during surgery is delivered to the center's pathologist.

(b) The pathologist's [and that an examination and] report on any [is made on the] tissue removed during surgery shall be included in the patient's medical record unless the center's medical staff have adopted a written policy exempting certain types of removed tissue from examination[, if required by the center's written policies].

(13)[(42)] Voluntary interruption of pregnancies. An ambulatory surgical center shall comply with the applicable Kentucky statutes concerning the voluntary interruption of pregnancies, including KRS 311.710 to 311.810.

Section 5. Postanesthesia [Postanesthesia] Recovery Services. (1) The center shall have at least one (1) postanesthesia recovery unit.

(2) There shall be adequate staff available in the recovery unit so that no patient is left alone at any time.

(3) A registered nurse shall be present in the recovery unit during the time that [when] a patient is recovering from anesthesia.

(4) A registered nurse shall be available to the recovery unit at all times.

(5) A registered nurse or health care professional [person] staffing the postanesthesia recovery unit shall be adequately trained in all aspects of postoperative and postanesthetic care.

(6) The recovery unit nurse shall record a nursing note on each [a] patient to document[, noting] the following:

- (a) Postoperative abnormalities or complications;
- (b) Pulse;
- (c) Respiration;
- (d) Blood pressure;
- (e) Presence or absence of swallowing reflex;
- (f) Cyanosis; and
- (g) The general condition of the patient.

(7) Available equipment shall include the following:

- (a) Suction machine;
- (b) Stethoscope;
- (c) Sphygmomanometer;
- (d) Emergency crash cart;
- (e) Necessary drugs; and
- (f) Oxygen.

(8)(a) The [surgical] center shall provide suitable accommodations for its patients.

(b) There shall be adequate floor space, furnishings, bed linens, and other utensils, equipment and supplies reasonably required for the proper care of the patients[~~accommodated~~].

Section 6. Pharmaceutical Services. (1) The center shall have a licensed pharmacy or have arrangements for promptly obtaining prescribed drugs and biologicals from a pharmacy.

(2)(a) The center shall have [provide] appropriate methods and procedures for the storage, control, and administration of drugs and biologicals[~~],~~ developed with the advice of a licensed pharmacist.

(b) The pharmacist shall properly label drugs for individual patients.

(3) Licensed medical or nursing personnel shall administer medications in accordance with the established standards of practice set forth for:

- (a) Podiatrists licensed in accordance with KRS 311.400;
- (b) Physicians licensed in accordance with KRS 311.571;
- (c) Dentists licensed in accordance with KRS ~~313.030~~[313.040 or 313.045];

(d) Dental specialists defined by KRS 313.010(9)[~~licensed in accordance with KRS 313.420~~]; or

(e) Nurses licensed in accordance with KRS 314.041, 314.042, or 314.051.

(4) Controlled substances.

(a) Controlled substances shall be kept under double lock (i.e., in a locked box in a locked cabinet). There shall be a controlled substances record that includes [in which is recorded] the:

- 1. Name of the patient;
- 2. Date and time;
- 3. Kind of controlled substance;
- 4. Dosage and method of administration of the controlled substance;
- 5. Name of the physician or practitioner who prescribed the controlled substance; and
- 6. Name of the nurse who administered the controlled substance[#].

(b) In addition to the requirements established in paragraph (a) of this subsection, there shall be a recorded and signed:

- 1. Schedule II controlled substances count daily conducted by a member of the nursing staff; and
- 2. Schedule III, IV, and V controlled substances count once per week by a member of the nursing staff.

Section 7. Radiology Services. (1) The center shall provide radiology services directly through an:

- (a) Agreement with a licensed hospital[~~];~~] or
- (b) [through an] Independent radiology service.

(2) The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852.

(3) If radiology services are provided directly by the center:

(a) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against[~~];~~]

- 1. Fire and explosion hazards;
- 2. Electrical hazards; and
- 3. Radiation hazards;

(b) A physician specializing in radiology shall supervise the department and interpret films that require specialized knowledge for accurate reading;

(c) Signed reports shall be promptly entered into the medical record and duplicate copies kept in the department; and

(d) Orders for radiology procedures shall be made by a physician, dentist, or podiatrist.

Section 8. Laboratory Services. (1) The center shall provide laboratory services directly through:

(a) Its own licensed laboratory;

(b) [~~through~~] An agreement with a laboratory in a licensed hospital[~~];~~] or

(c) [through] An agreement with a licensed laboratory nearby.

(2) The medical laboratory providing services to the center shall be licensed pursuant to KRS 333.030, unless it is a part of a licensed hospital.

(3) Laboratory examinations shall be made only upon the request of a physician, dentist, or podiatrist.

(4)(a) The laboratory shall provide tissue pathology and diagnostic cytology examinations.

(b) Tissues removed from a patient during surgery shall be examined by a physician specializing in pathology if required by the center's written policies.

(5) Laboratory and tissue pathology reports shall be signed and entered into the medical record.

Section 9. Utilization Review. (1) The [surgical] center shall have in effect a plan for utilization review of the center's [their] services on at least a quarterly basis by a committee of physicians, dentists, or podiatrists who have no financial interest in the center.

(2) Reviews shall be made of the center's admissions and professional services, [furnished] including utilization of surgical services and tissue reports.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 6, 2022

FILED WITH LRC: May 11, 2022 at 1:45 p.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: Kara Daniel; Stephanie Brammer-Barnes; Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by ambulatory surgical centers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042(1), which requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042(1) by establishing the minimum licensure requirements for the operation of and services provided by ambulatory surgical centers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements for the operation of and services provided by ambulatory surgical centers.

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

(a) How the amendment will change this existing administrative

regulation: This amendment is required by KRS 216B.153, a new law created by the passage of SB 38 from the 2021 session of the Kentucky General Assembly. KRS 216B.153(2) directs the cabinet to promulgate administrative regulations to require a health facility that utilizes energy generating devices to use a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke. In addition, this amendment makes technical changes to conform to the administrative regulation drafting requirements of KRS Chapter 13A to improve clarity and flow, and also makes general housekeeping changes.

Additionally, in accordance with a request submitted during the public comment period, this amended after comments regulation modifies the wording of the cross-reference to KRS 216B.165 in Section (2)(1)(c)12..

(b) The necessity of the amendment to this administrative regulation: This amendment is required by KRS 216B.153(2).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.153 by creating a requirement for ambulatory surgical centers to make use of a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke.

(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 adding a requirement for surgical smoke evacuation systems pursuant to KRS 216B.153.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects ambulatory surgical centers that provide surgical procedures that are likely to produce surgical smoke. There are currently 49 ambulatory surgical centers licensed in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Ambulatory surgical centers will be required to make use of a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). If an ambulatory surgical center does not currently have a smoke evacuation system, the facility will incur costs associated with the purchase of a system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Surgical smoke generated by the use of an energy-generating device during a surgical procedure contains toxic and biohazardous substances that present risks to perioperative team members and patients. Therefore, the use of smoke evacuation equipment required by this amendment will protect health care workers and patients from the harmful effects of surgical smoke.

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

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal funds 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: No increase in fees or funding is necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all ambulatory surgical centers regulated by it.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects Kentucky-licensed ambulatory surgical centers. This administrative regulation also impacts the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042, 216B.153

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Although KRS 216B.990(8) authorizes the cabinet to impose a fine ranging from \$100 to \$500 for each violation of KRS 216B.153, the cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be collected.

(b) How 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 cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be collected.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment will not generate cost savings for regulated entities during the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This amendment will not generate cost savings for regulated entities during subsequent years.

(c) How much will it cost the regulated entities for the first year? Although KRS 216B.990(8) authorizes the cabinet to impose a fine ranging from \$100 to \$500 for each violation of KRS 216B.153, the cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be incurred by the regulated entities. In addition, if an ambulatory surgical center does not currently have a smoke evacuation system as defined by KRS 216B.153(1)(b), the facility will incur costs associated with the purchase of a system for procedures likely to produce surgical smoke.

(d) How much will it cost the regulated entities for subsequent years? Same response as provided in (4)(c) above.

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

Cost Savings(+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This amendment will not have a major economic impact on ambulatory surgical centers.

FEDERAL MANDATE ANALYSIS COMPARISON

- (1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 - 1320d-8
- (2) State compliance standards. KRS 216B.042
- (3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information.
- (4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose requirements that are more strict than federal laws or regulations.
- (5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amended After Comments)**

906 KAR 1:110. Critical access hospital services.

RELATES TO: KRS 205.639(3), 211.842-211.852, 216.378, 216.379, 216.380, [216B.040,] 216B.015(6), 216B.040(1)(c), (2)(b), [216B.042, 216B.045-216B.055, 216B.075,] 216B.105, 216B.153, 216B.165, 216B.990, Chapter [216B.115 –216B.131,] 311, 315.035, 333.030, [345, –333,] 42 C.F.R. 485.601-42 C.F.R. 485.647, 45 C.F.R. Part 160, Part 164, 42 U.S.C. 1320d-2—1320d-8, 42 U.S.C. 1395i-4(c)(2)[485.644]

STATUTORY AUTHORITY: KRS 216.380(14), [216B.040(3)(a),] 216B.042(1)(a), (c), [42 U.S.C. 1395i-4]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.380(14) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement a program for the licensure of critical access hospitals. KRS 216B.042(1)(a) and (c) require the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function and to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes quality of care and licensure standards for critical access hospitals.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)(5).

(2) "Licensee" means the entity that has been issued and holds a valid critical access hospital license from the cabinet [for Health and Family Services].

Section 2. Requirements for Critical Access Status. (1) An applicant for initial licensure of a critical access hospital shall provide documentation to the cabinet verifying that the hospital:

- (a) Complies with the requirements of KRS 216.380 and this administrative regulation[(3) or (4) have been met]; and
- (b) [The hospital] Qualifies for state designation under 42 U.S.C. [Section] 1395i-4(c)(2); and
- (c) The requirements of this administrative regulation have been met.
- (2) In accordance with 42 U.S.C. 1395i-4(c)(2)(B), a critical access hospital that was certified by the secretary of the cabinet as

a necessary provider of services prior to January 1, 2006, may be relicensed as a critical access hospital ~~if~~ ~~—provided~~ the requirements of this administrative regulation are met.

(3)(a) If an application for initial licensure of a critical access hospital is denied by the cabinet, the applicant shall be entitled to an administrative hearing pursuant to KRS 216B.040(1)(c) and (2)(b), and KRS 216B.105[Chapter 13B].

(b) Licensure hearings shall follow the procedures established by ~~in~~ 900 KAR 6:040.

Section 3. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the critical access hospital and for compliance with federal, state, and local laws and administrative regulations ~~law~~ pertaining to the operation of the critical access hospital.

(2) A critical access hospital shall be under the medical direction of a physician licensed to practice medicine or osteopathy in Kentucky.

(3) The licensee shall:

- (a) Establish written policies and lines of authority; and
- (b) Designate an administrator as the person principally responsible for the daily operation of the critical access hospital.

(4) The licensee shall develop patient care policies with the advice of a group of healthcare professionals ~~professional persons, as~~ identified by the licensee.

(a) Pursuant to 42 C.F.R. 485.635(a)(2), the advisory group ~~of professional persons~~ shall include:

1. At least one (1) Kentucky-licensed doctor of medicine or doctor of osteopathic medicine ~~or more physicians licensed in the Commonwealth of Kentucky~~; and

2. One (1) or more physician assistants, advanced registered nurse practitioners, or clinical nurse specialists ~~persons who are not members of the staff~~.

(b) The patient care policies shall include:

1. A description of services that the critical access hospital furnishes, including services provided ~~shall provide directly or~~ through a contractual agreement;

2. A written program narrative describing in detail the:

- a. Services ~~to be~~ offered;
- b. Methods and protocols for service delivery;
- c. Qualifications of personnel ~~to be~~ involved in the delivery of services; and
- d. Outcomes expected to be attained through the delivery of specified services;

3. Guidelines for the medical ~~case~~ management of health problems, including ~~which include~~:

- a. Criteria for determining if a case requires medical consultation;
- b. Patient referral procedures; and
- c. Maintenance of health records;
- 4. Procedures for the proper storage, handling, and administration of drugs and biologicals; ~~and~~
- 5. Procedures establishing annual review and evaluation of services provided;
- 6. Procedures that assure compliance with KRS 216B.165 ~~the reporting and investigation of quality of care and safety problems in accordance with KRS 216B.165, including assurance that retaliatory action shall not be taken against a staff member who in good faith reports a patient care or safety problem~~; and
- 7. A surgical smoke safety and control policy that shall be available to staff if the hospital offers any surgical procedure that is likely to produce surgical smoke.

(5) A critical access hospital shall establish written policies regarding patient rights and responsibilities ~~to~~ ~~—The policies shall~~ assure that each patient is:

- (a) Informed of:
 - 1. Patient rights;
 - 2. Rules and regulations governing patient conduct and responsibilities; and
 - 3. The procedure for handling a patient grievance;
- (b) Informed of services available and related charges, including charges not covered by Medicare, Medicaid, or other

third-party payor;

(c) Informed of the patient's:

1. Medical condition, unless medically contraindicated as documented in the patient's medical record;
2. Right to participate in planning his or her medical treatment; and

3. Right to refuse to participate in experimental research;

(d) Assisted in understanding his or her patient rights;

(e) Provided confidential treatment of his or her records in accordance with subsection (9) of this section~~and given the opportunity to approve or refuse their release to an individual not involved in his or her care, except as required by Kentucky law or third-party payment contract~~;

(f) Treated with consideration, respect, and recognition of the patient's dignity and individuality, including privacy in treatment and care of personal health needs; and

(g) Informed of the procedure for filing a grievance or a recommendation to change a policy or service. The policy shall establish a time frame within which critical access hospital personnel shall determine what corrective action to take.

(6) Personnel.

(a) Staffing shall be maintained in accordance with KRS 216.380(9).

(b) A physician shall:

1. Be responsible for all medical aspects of the critical access hospital;
2. Provide direct medical services in accordance with KRS Chapter 311;
3. Be present to provide medical direction, supervision, and consultation to ~~the~~ staff at least once in every two (2) week period, unless no patient has been treated since the last visit;

4. Participate with other medical personnel in developing, executing, and periodically reviewing written policies and services;

5. Review and sign patient records during the site visit; and

6. Provide medical orders and medical care services to patients in accordance with the critical access hospital's ~~hospital~~ protocols.

(c) A registered nurse or licensed practical nurse shall be on duty if a patient has been admitted for overnight stay.

(7) The critical access hospital shall have transfer and linkage contracts in accordance with ~~that meet the requirements of~~ KRS 216.380(11) and (12).

(8) Medical records.

(a) A critical access hospital shall maintain a complete, comprehensive, accurate, and legible medical record for each patient. The ~~records. A medical~~ record shall include ~~contain at least~~ the following information:

1. The names of the patient's immediate family members;
2. Medical and social history, including information ~~data~~ obtainable from other providers;
3. Description of each medical visit or contact, including:
 - a. Condition or reason necessitating visit or contact;
 - b. Assessment;
 - c. Diagnosis;
 - d. Services provided;
 - e. Medications and treatments prescribed; and
 - f. Disposition made;
4. Reports of laboratory, x-ray, and other test findings; and
5. Documentation of referrals ~~made~~, including:
 - a. Reason for the referral;
 - b. To whom patient was referred; and
 - c. Information obtained from the referral source.

(b) Confidentiality of individual patient records shall be maintained in accordance with subsection (9)(b) of this section~~at all times~~.

(c) Transfer of records. The critical access hospital shall:

1. Establish systematic procedures to assist with ~~in~~ continuity of care if a ~~the~~ patient transfers to another licensed level of care; ~~moves to another source of care;~~ and

2. ~~shall;~~ Upon proper release, transfer medical records or an abstract upon request.

(d) Retention of records. Medical records shall be retained for at least:

1. Six (6) years from the date of ~~After a patient's death or~~ discharge; or

2. ~~the completed medical record shall be placed in an inactive file and retained for five (5) years or;~~ If the patient is a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(9)(a) Ownership.

1. Medical records shall be the property of the critical access hospital.

2. The original medical record shall not be removed from the critical access hospital except by court order or subpoena.

3. Copies of a medical record or portions of the record may be used and disclosed. Use and disclosure shall be as established by paragraph (b) of this subsection.

(b) Confidentiality and Security; Use and Disclosure.

1. The critical access hospital shall maintain the confidentiality and security of medical records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

2. The critical access hospital may use and disclose medical records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

3. A critical access hospital may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(10) Utilization review and medical audit. In order to determine the appropriateness of services delivered, there shall be a written plan for utilization review that which specifies the frequency of reviews and composition of the body conducting the review.

(11)~~(40)~~ Quality assessment and performance improvement program.

(a) Pursuant to KRS 216.380(10), a critical access hospital shall have a program~~in accordance with KRS 216.380(10);~~ to ensure continuous and effective mechanisms for:

1. Review and evaluation of patient care; and

2. Corrective action.

(b) The quality assessment and performance improvement program shall:

1. Be approved by the licensee;

2. ~~;~~

(c) ~~The program shall:~~

4. ~~Establish responsibility for~~ the monitoring and evaluation of services;

3. ~~2.~~ Delineate the scope of care;

4. ~~3.~~ Identify specific aspects of care to be provided;

5. ~~4.~~ Establish and document clinical criteria used to monitor care and services;

6. ~~5.~~ Systematically evaluate the standard of care to identify problems and recommend corrective action or alternatives to improve the standard of care;

7. ~~6.~~ Establish criteria to assess the effectiveness of corrective action taken to improve care; and

8. ~~7.~~ Require documentation of improvements in the standard of care~~;~~ subsequent to corrective action taken.

(12) Contract

~~(14) Contracted~~ services. The critical access hospital shall assure that a service provided under contract is properly licensed or certified in accordance with applicable local, state, and federal regulations and statutes.

Section 4. Provision of Services. (1) A critical access hospital shall provide ~~the~~ services in accordance with KRS 216.380(5).

(2) Laboratory services.

(a) A critical access hospital shall provide~~either directly or through contract,~~ basic laboratory services essential to the immediate diagnosis and treatment of each ~~the~~ patient.

(b) If the critical access hospital provides laboratory services directly, the hospital ~~service~~ shall comply ~~be in compliance~~ with 902 KAR 20:016, Section 4(4).

(c) If the critical access hospital contracts for laboratory services, the laboratory shall be licensed pursuant to KRS 333.030 [it contracts with shall be in compliance with KRS Chapter 333].

(d) The following services shall be provided:

1. Chemical examination of urine, including ketone measurement, by stick or tablet method, or both;
2. Microscopic examination of urine sediment;
3. Hemoglobin or hematocrit;
4. Blood glucose[sugar];
5. Examination of stool specimens for occult blood;
6. Pregnancy tests; and
7. Primary culturing for transmittal to a hospital laboratory or licensed laboratory.

(3) Emergency services.

(a) A critical access hospital shall:

1. Provide medical emergency procedures as a first response to common life-threatening injuries and acute illness;
2. [and shall] Have available [the] drugs and biologicals commonly used in life-saving procedures, such as analgesics, local anesthetics, antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids; and

3. Provide [:

(a)] examination services [shall be provided by the critical access hospital] in accordance with 902 KAR 20:012.

(b) There shall be a physician, nurse practitioner, or physician assistant with training or experience in emergency care;

1. On-call and immediately available by telephone or radio contact[;] and
2. Available on site within thirty (30) minutes on a twenty-four (24) hour per-day basis.

(c) A registered nurse shall be on duty at the hospital to provide immediate emergency care on a twenty-four (24) hour per day basis.

(4) Pharmacy services.

(a) In accordance with KRS 216.380(5)(b), a critical access hospital shall provide[; either directly or through contract,] basic pharmacy services essential to the treatment of the patient.

(b)[(a)] If the critical access hospital provides pharmacy services directly, the hospital shall comply [it shall be in compliance] with 902 KAR 20:016, Section 4(5).

(c)[(b)] If the critical access hospital contracts for pharmacy services, the pharmacy shall have a permit to operate in accordance with KRS 315.035[it contracts with shall be in compliance with KRS Chapter 315].

(5) Radiology services.

(a) In accordance with KRS 216.380(5)(b), a critical access hospital shall provide[; either directly or through contract,] basic radiology services essential to the immediate diagnosis and treatment of the patient.

(b)[(a)] If the critical access hospital provides radiology services directly, the hospital shall comply [it shall be in compliance] with 902 KAR 20:016, Section 4(6).

(c)[(b)] If the critical access hospital contracts for radiology services, the radiology facility shall be currently licensed or registered [service it contracts with shall have a current license or registration] pursuant to KRS 211.842 to 211.852.

(6) Dietary services. Pursuant to KRS 216.380(5)(b), the critical access hospital shall provide dietary services [shall be provided either] directly or by contract[;] in accordance with 902 KAR 20:016, Section 4(3) to each[; if a] patient who is admitted to the [critical access] hospital and remains for more than twelve (12) hours.

(7) Psychiatric units. A critical access hospital that provides inpatient psychiatric services in a distinct part [has established a psychiatric] unit in accordance with KRS 216.380(7)(a)[;] shall comply [be in compliance] with 902 KAR 20:180.

(8) Rehabilitation units. A critical access hospital that provides inpatient [has established a] rehabilitation services in a distinct part unit in accordance with KRS 216.380(7)(b)[;] shall comply [be in compliance] with the requirements of 902 KAR 20:240.

(9) Surgical services.

(a) If a critical access hospital provides surgical services, the

hospital shall comply with 42 C.F.R. 485.639.

(b) 1. In accordance with KRS 216B.153, a critical access hospital that utilizes an energy-generating device shall make use of a smoke evacuation system:

- a. That effectively captures and neutralizes surgical smoke at the site of origin and before the smoke can make ocular contact or contact with the respiratory tract of the occupants of the room; and
- b. During any surgical procedure that is likely to produce surgical smoke.

2. The cabinet shall impose fines in accordance with KRS 216B.990(8) for each violation of noncompliance with KRS 216B.153 only if the violation has not been remedied after the hospital has had an opportunity to correct the violation through the filing of a plan of correction in accordance with 902 KAR 20:008, Section 2(13).

Section 5. Physical and Sanitary Environment. A critical access hospital shall maintain the condition of the physical plant and physical plant requirements established by [comply with the provisions of] 902 KAR 20:016, Section 3(10).

Section 6. Facility Requirements. A critical access hospital shall comply with the applicable structural specifications and physical plant requirements established by [ef] 902 KAR 20:009 for [related to the] services offered.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 10, 2022

FILED WITH LRC: May 11, 2022 at 1:45 p.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: Kara Daniel; Stephanie Brammer-Barnes; Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation of and services provided by critical access hospitals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of KRS 216.380(14) to implement a program for the licensure of critical access hospitals. This administrative regulation is also necessary to comply with KRS 216B.042(1), which requires the Cabinet for Health and Family Services to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216.380 and 216B.042(1) by establishing the minimum licensure requirements for the operation of and services provided by critical access hospitals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the minimum licensure requirements for the operation of and services provided by critical access 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: This amendment is required by KRS 216B.153, a new law created by the passage of SB 38 from the 2021 session of the Kentucky General Assembly. KRS 216B.153(2) directs the cabinet to promulgate administrative regulations to require a health facility that utilizes energy generating devices to make use of a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke. In addition, this amendment makes

technical changes to conform to the administrative regulation drafting requirements of KRS Chapter 13A to improve clarity and flow, and also makes general housekeeping changes.

Additionally, this amended after comments regulation modifies the wording of the cross-reference to KRS 216B.165 in Section (3)(4)(b)6. in accordance with a request submitted during the public comment period.

(b) The necessity of the amendment to this administrative regulation: This amendment is required by KRS 216B.153(2).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.153 by creating a requirement for critical access hospitals to make use of a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke.

(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 adding a requirement for surgical smoke evacuation systems pursuant to KRS 216B.153.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects critical access hospitals that provide surgical procedures that are likely to produce surgical smoke. There are currently 27 critical access hospitals licensed in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Critical access hospitals will be required to make use of a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). If a critical access hospital does not currently have a smoke evacuation system, the facility will incur costs associated with the purchase of a system if the hospital offers any surgical procedure that is likely to produce surgical smoke.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Surgical smoke generated by the use of an energy-generating device during a surgical procedure contains toxic and biohazardous substances that present risks to perioperative team members and patients. Therefore, the use of smoke evacuation equipment required by this amendment will protect health care workers and patients from the harmful effects of surgical smoke.

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

(a) Initially: There are no additional costs to the Office of Inspector General for implementation of this amendment.

(b) On a continuing basis: There are no additional costs to the Office of Inspector General for implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of the licensure function is from federal funds 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: No increase in fees or funding is necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all critical access hospitals regulated by it.

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects Kentucky-licensed critical access hospitals. This administrative regulation also impacts the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.380, 216B.042, 216B.153

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Although KRS 216B.990(8) authorizes the cabinet to impose a fine ranging from \$100 to \$500 for each violation of KRS 216B.153, the cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be collected.

(b) How 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 cabinet is unable to predict with accuracy how many violations may be cited or otherwise determine the amount of fines that may be collected.

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 485.601-485.647, 45 C.F.R. 160, 164, 42 U.S.C. 1320d-2 - 1320d-8, 42 U.S.C. Section 1395i-4(c)(2)

(2) State compliance standards. KRS 216.380, 216B.042

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 485.601-485.647 establish the federal conditions of participation for the certification of critical access hospitals.

45 C.F.R. 160, 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information.

42 U.S.C. Section 1395i-4(c)(2) establishes the criteria for designation as a critical access hospital.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose requirements that are more strict than federal laws or regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:360. Private child care placement, levels of care, and payment.

RELATES TO: KRS 199.011, 199.640-199.680, 199.801, 600.020(25), 605.090(1)(b), (d), 610.110, 42 U.S.C. 622, 672, 675
 STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.641(4) and 605.090(1)(d) authorize the cabinet to establish by administrative regulation the rate setting methodology and the rate of payment for child-caring facilities and child-placing agencies, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to promulgate administrative regulations establishing conditions under which the cabinet may place a child committed to the Department of Juvenile Justice or the cabinet, in a child-caring facility or a child-placing agency operated by a local governmental unit or private organization willing to receive the child, upon the conditions established by the cabinet. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) ~~five (5)~~ levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level and placement setting; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care and placement setting; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 199.011(3).
- (2) "Child-caring facility" or "facility" is defined by KRS 199.011(5).
- (3) "Child-placing agency" or "agency" is defined by KRS 199.011(6).
- (4) "Department" is defined by KRS 199.011(7) and 199.641(1)(b).
- (5) "Emergency shelter" is defined by KRS 600.020(25).
- (6) "Gatekeeper" means the department or agent responsible for:
 - (a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and
 - (b) Other administrative duties in the areas of:
 1. Assessment;
 2. Placement;
 3. Performance measurement; and
 4. Consultation regarding children and their needs.
- (7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.
- (8) "Initial level of care" means a level of care:
 - (a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and
 - (b) That is time-limited and effective for the first six (6) months of a child's placement.
- (9) "Level of care" means the standard ~~[one (1) of five (5) standards]~~ representing the treatment and service needs of a child placed by the cabinet in out-of-home care.
- (10) "Level of care packet" means an assessment conducted by designated cabinet staff and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care and placement setting in accordance with Section 2(2) of this administrative regulation.
- (11) **"Medically complex" means a child who is determined to have a medical condition as defined by 922 KAR 1:495 and further described in 922 KAR 1:350, Section 4.**

~~(12)~~ "Model program cost analysis" is defined by KRS 199.641(1)(c).

~~(13)~~~~(14)~~ "Placement coordinator" means an individual whose responsibilities are established in KRS 199.801.

~~(14)~~~~(13)~~ "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

~~(15)~~~~(14)~~ "Time study" is defined by KRS 199.641(1)(d).

~~(16)~~~~(15)~~ "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning, treatment, service, and supervision needs; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement.

(1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age or a child who is medically complex regardless of age at the time:

(a) The child is referred for placement with a child-caring facility or child-placing agency[enters the level of care system];

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age or is found to be medically complex; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) A level of care packet shall include the ~~[DPP-886, Private Child Care Client Inter-agency Referral Form, and the]~~ following child-specific information:

(a) Identifying data;

(b) Individual strengths and limitations;

(c) Daily living skills;

(d) Physical health needs[,] including:

1. Any significant medical history;

2. Current diagnoses, assessments, and treatment; and

3. Documentation[, documentation] indicating the child's medically complex status if the child is medically complex;

(e) Behavioral [Mental] health needs including:

1. Screening tools utilized based upon the child's age[Behavioral health]; and

2. Current diagnoses, assessments, [Diagnosis] and treatment recommendations;

(f) Medications;

(g) History of substance abuse, high risk, or other significant behavior including:

1. Sexual acting out; and

2. Legal history, status, or other court involvement[delinquency behavior patterns];

(h) Out-of-home care placement information including:

1. Reason for entering out-of-home care;

2. History of abuse, neglect, or dependency;

3. Current custody status;

4. Current and previous placements; and

5. Permanency goal;

(i) Social supports;

(j) Educational functioning, grade level, and any special educational need; and

(k) Religious background and practices[; and

~~(l) If a child has an IQ of seventy (70) or above:~~

~~1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach);~~

~~2. Child Behavior Checklist For Ages 6-18 (Achenbach); or~~

~~3. Another tool pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15)].~~

(3)(a) If a child needs placement within a child-caring facility or a child-placing agency [the level of care system], a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the placement coordinator.

(b) The placement coordinator shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(4) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement in accordance with KRS 199.801 and 922 KAR 1:370, a cabinet staff person shall:

(a) Complete the DPP-114T, Transitional Child Caring and Child Placing Level of Care Schedule, through January 31, 2023, or the DPP-114, [Private] Child Caring and Child Placing Level of Care Schedule, effective February 1, 2023, with the level of care payment rate for placement type:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. If there is an emergency placement, within two (2) business days of the placement or receipt of the assigned level of care;

(b) Arrange transportation for the child to the placement; and

(c) Notify the placement coordinator of the selected placement.

(5) If a child-caring facility or child-placing agency accepts an emergency placement requested by the cabinet outside of the gatekeeper's regular working hours, a cabinet staff person shall:

(a) Submit a level of care packet to the gatekeeper for a child who does not have a current level of care assignment; and

(b) Inform the placement coordinator of the location and date of placement.

(6) The placement coordinator shall notify a child-caring facility or child-placing agency that was not chosen for placement upon provision of notification in accordance with subsection (4)(c) of this section.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child referred by the cabinet or currently placed in a child-caring facility or child-placing agency for the purpose of establishing an initial or reassigned level of care. The child shall be:

(a) Four (4) years of age or older; or

(b) Determined to be medically complex by designated cabinet staff[Evaluate a child forty-eight (48) months of age or older or any child designated as medically complex:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency; and

(b) For an initial or reassigned level of care];

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to an [a needs] assessment of the child's treatment, supervision, and service needs consistent with one (1) of the three (3) [five (5)] levels of care; and

(b) Return the completed[:

1. ~~DPP-886, Private Child Care Client Inter-agency Referral Form, to the department; or~~

2. ~~CRP-6, Children's Review Program Notice of Level of Care Payment Authorization~~ Assignment [Reassignment], to the department and the child-caring facility or the child-placing agency;

(3) Assess a child placed in a child-caring facility in accordance with 42 U.S.C. 675a(c) within the first thirty (30) days of placement;

(4)[(3)] Conduct a utilization review for a child:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b)1. Every three (3) months thereafter if the child is in a [private] child-caring facility [care residential placement]; or

2. Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(5)[(4)] Reassign a child's level of care after the previous level has expired;

(6)[(5)] Monitor each child-caring facility and child-placing agency;

(7)[(6)] Maintain a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes; and

(8)[(7)] For a utilization review, return the completed CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, to the [private] child-caring facility or [private] child-placing agency and the cabinet after a level is conducted or reassigned.

Section 4. Levels of Care. A level of care shall be assigned in accordance with this section.

(1) A Level I child shall be a child who requires a routine home environment that:

(a) Provides for the basic needs of the child[maintenance];

(b) Provides guidance and nurturing;

(c) Provides supervision to meet the needs of the child; [and]

(d) Provides educational support;

(e) Provides access to routine medical care; and

(f) Ensures the emotional and physical well-being of the child.

(2) A Level II child shall be a child who:

(a) Requires a routine home environment that meets the requirements of subsection (1) of this section;

(b) Has identified treatment needs based on available behavioral health screening and assessment information, current treatment recommendations, or has been determined to be medically complex, as defined by 922 KAR 1:495 and further described in 922 KAR 1:350, Section 4];

(c) Has a history of complex trauma related to maltreatment;

(d) [May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b)] Requires supervision in a structured supportive setting with:

1. Counseling available from professional [or paraprofessional] staff;

2. Educational support; and

3. Services designed to improve physical and behavioral health and wellbeing;

(e) [development of normalized social skills.

(3) A Level III child shall be a child who:

(a) May engage in an occasional violent act

(b) May have superficial or fragile interpersonal relationships

(c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;

(d)] May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(f)](e)] Requires a program flexible enough to allow increased:

1. Independence [Extended trials of independence] if the child is capable; or

2. Structure during temporary periods of regression[A period of corrective and protective structure relapse; and

3. Counseling available from professional or paraprofessional staff].

(3)[(4)] A Level III [IV] child shall be a child who:

(a) Has significant treatment needs as indicated by:

1. Available behavioral health screening and assessment information or current treatment recommendations that require specialized or frequent treatment services;

2. A determination by designated cabinet staff that the child has a high degree of medical complexity that requires specialized medical care;

3. The presence of both significant behavioral health needs requiring treatment and a determination of medical complexity by designated cabinet staff; or

4. A severe impairment or disability that requires a caregiver to attend to all care needs of the child[behavioral and physical, mental, or social needs that may present a moderate risk of causing harm to himself or others]; and

(b) Requires a highly structured supportive setting[-with]:

1. With frequent therapy or therapeutic services provided [Therapeutic counseling available] by a qualified mental health professional or other treatment professional allowed pursuant to 922 KAR 1:300 within a treatment program designed to improve social, emotional, and educational adaptive behavior[professional staff]; [and]

2. ~~That includes~~ [A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child shall be a child who:

(a) Has a severe impairment, disability, or need;

(b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others; and

(d) Requires Level IV services and a:

1. Highly structured program with] twenty-four (24) hour supervision; or

3.[2. Specialized setting] That provides safe and effective care for a severe, chronic medical condition, behavioral health issue, or other highly specialized needs[disorder, or emotional disturbance].

Section 5. Payment Methodology and Rates.

(1) Payment Methodology.

(a) The cabinet shall base a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, upon the "model program cost analysis" defined by KRS 199.641(1)(c).

(b) Each private child-[-]caring facility and child-placing agency shall report to the cabinet annually, on the DPP-888, [**Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and**] Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs and Facilities.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined.

(a) The factor shall be determined:

1. Based on the amount of treatment provided at each level of care; and

2. By determining the median of:

a. Number of daily treatment hours, derived from time study data, provided to children served by private child-caring facilities and child-placing agencies; and

b. Level of care of children served by private child-caring facilities and child-placing agencies that contract with the cabinet.

(b)1. For children whose level is determined, the median level of care shall be represented by an index factor of one (1).

2. For children whose level is not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to the children in the median level pursuant to subparagraph 1 of this paragraph.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Statewide median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

- a. Board;
- b. Care; and
- c. Treatment components; or

2. For an emergency shelter without a treatment license:

- a. Board; and
- b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes shall include:

- 1. Child safety while in the care of a private child-caring facility or child-placing agency;
- 2. Child safety after reunification with the child's family;

3. Adequate educational support;

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

5. Increased placement stability during the service period;

6. Increased achievement of permanency goals; and

7. Increased stability in less restrictive or permanent[permanency] placement following planned discharge.

(b) The cabinet's contract with a private child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes established in paragraph (a) of this subsection; and

2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private child-caring facilities or child-placing agencies to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) May include case management responsibilities shared between the cabinet and the child-caring facility or child-placing agency.

(8) Payment to child-caring facilities or child-placing agencies that provide alternative services according to subsection (7) of this section shall be based upon expectations agreed upon between the cabinet and the child-caring facility or child-placing agency such as:

(a) Reduced length of stay in out-of-home placement;

(b) Increased safety from child abuse or neglect;

(c) Increased number of children moving into and remaining in permanent placement;

(d) Increased number of children and their families cared for in close proximity to their home communities;

(e) Increased number of children reunified with their families;

(f) Increased accountability for success in after care; or

(g) Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility that cares for children in the custody of the cabinet[in the levels of care system] shall be licensed pursuant to[under] 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The facility shall comply with 922 KAR 1:300[1:390], Section 8[4], Residential Treatment Program, if providing treatment-[-]oriented services.

(3) Only a child assigned as Level III shall be placed in residential care.

(4) The daily rate for residential care to a child-caring facility shall be:

(a) \$193.50 per child for a child-caring facility determined by designated cabinet staff to not meet the requirements of a specified setting for placement in accordance with 42 U.S.C. 672(k)(2); and

(b) \$298.50 per child for a child-caring facility determined by designated cabinet staff to meet the requirements of a specified setting for placement in accordance with 42 U.S.C. 672(k)(2).[Level I – \$51.19;

(b) Level II – \$61.52;

(c) Level III – \$109.74;

(d) Level IV:

VOLUME 48, NUMBER 12– JUNE 1, 2022

- 1. \$183.00; or
 - 2. \$193.50 on or after August 1, 2018; and
- (e) Level V:
- 1. \$236.60; or
 - 2. \$256.70 on or after August 1, 2018.]

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be:

(a) ~~\$193.50 per child per day for~~[~~F~~or] a child-caring facility with a treatment license[;]:

- 1. \$115.31 per day; or
- 2. \$126.80 per day on or after August 1, 2018]; or

(b) ~~\$145.12 per child per day for~~[~~F~~or] a child-caring facility without a treatment license[;]:

- 1. \$101.41 per day; or
- 2. \$111.60 per day on or after August 1, 2018].

(2) If a child with an assigned level of care enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall adhere]:

(a) ~~Receive a rate consistent with the child's assigned level of care pending results of the next scheduled utilization review;~~

(b) ~~If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and~~

(c) ~~Adhere~~] to the child's individual treatment plan.

~~[(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.~~

(b) ~~If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:~~

1. ~~Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;~~

2. ~~If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section per day; and~~

3. ~~Adhere to the child's individual treatment plan.]~~

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency.

(1) The basic daily rate for foster care shall be \$44.82.

(2) If assessed on or after July 1, 2022, upon the next utilization review, the daily rate for foster care shall be \$44.82 per child for:

(a) A child under the age of four (4) who has not been assigned a level; and

(b) A child over the age of four (4) with a level I assigned level of care.

(3) If assessed prior to July 1, 2022, the [The] daily rates for therapeutic or treatment foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher - \$76.10 per child;

(b) Level III - \$83.16 per child;

(c) Level IV - \$101.23 per child; and

(d) Level V - \$139.96 per child.

(4) If assessed [For a child assessed and assigned one of the following levels of care] on or after July 1, 2022, upon the next utilization review, the daily rates for therapeutic or treatment foster care shall be:

(a) Level II - \$83.16 per child; and

(b) Level III - \$139.96 per child.

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, the amount established in Section 8(1) of this administrative regulation for the committed

child of an adolescent parent who is committed to the cabinet.

Section 10. Independent Living Programs. (1) An independent living program shall be licensed pursuant to 922 KAR 1:305[1:310] and shall meet the standards for independent living programs established in 922 KAR 1:310 and 922 KAR 1:340.

(2) The daily rate for an independent living program shall be:

(a) \$83.16 per child for Level I or Level II; and

(b) \$139.96 per child for Level III.

(3) A Level III child in an independent living setting shall require increased structure, supervision, case management, and treatment services.

Section 11. Programs with Decoupled Rates. (1) A child-caring facility or child-placing agency providing highly specialized behavioral health services may be paid for board and treatment services separately through agreement with the:

(a) Department for the cost of room, board, and watchful oversight; and

(b) Department for Medicaid Services or its designee for behavioral health treatment services.

Section 12. Provider Requirements.

(1) A child-caring facility or child-placing agency shall:

(a) Inform the department of the levels of care the facility or agency has the ability to serve;

(b) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

1. Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

2. Clinical services including:

a. The evaluation and treatment of behavioral health needs[an emotional disorder, mental illness, or substance abuse problem]; and

b. Identification and alleviation of related trauma symptoms, disability, or distress[;] experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

3. Support services that:

a. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

b. Allow a child to cope with the trauma, disability, or distress;

c. Provide access to improving the educational or vocational status of the child; and

d. Provide essential elements of daily living;

(c) Submit the following reports [~~to the gatekeeper~~] in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

1. To the gatekeeper, a Child and Adolescent Needs and Strengths assessment report completed within the past six (6) months or another supplemental tool approved by the gatekeeper; and

2. ~~[For a child who has an IQ seventy (70) or above, a behavior inventory appropriate to the child's developmental level consisting of completed forms established in Section 2(2)(l) of this administrative regulation; and~~

2. ~~For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level:~~

~~a. Consisting of:~~

~~(i) A completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology); or~~

~~(ii) Another completed tool identified and piloted pursuant to the Promoting Wellbeing and Adoption after Trauma Grant in accordance with 42 U.S.C. 622(b)(15); and~~

~~b. By the first utilization review due date and every twelve (12) months thereafter; and~~

3. ~~To the gatekeeper and designated cabinet staff, a copy of the CRP-7, Children's Review Program Application for Level of Care Payment (ALP):~~

~~a. On a quarterly basis, for a private child care residential placement; or~~

~~b. On a semiannual basis for a foster care placement;~~

(d) Provide outcomes data and information as requested by the gatekeeper; and

(e) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or
2. The Joint Commission [~~on Accreditation for Healthcare Organizations~~].

(2) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (1)(e) of this section.

Section 13. [~~Section 14.~~] Utilization Review and Authorization of Payment.

(1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports established in Section ~~12~~[~~10~~](1)(c) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as established in Section ~~12~~[~~10~~](1)(c) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date, the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper;

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged;

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) [~~If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports established in Section 10(1)(c) of this administrative regulation have been submitted on time, and if:~~

(a) ~~The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or~~

(b) ~~The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day, the therapeutic foster care rate for the assigned level shall apply.~~

(5) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination as established in Section ~~14~~[~~12~~] of this administrative regulation.

Section 14. [~~Section 12.~~] Redetermination.

(1) If the child-caring facility, child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

- (a) New information that supports the request for a new level;

and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. [~~DPP-886, Private Child Care Client Inter-agency Referral Form, for an initial or reassigned level;~~

~~2.]~~ CRP-2, Children's Review Program Notice of Level of Care Payment Authorization, for a utilization review;

~~2.]~~ CRP-4, Children's Review Program Notice of Level of Care Redetermination;

~~3.]~~ CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, for a utilization review; or

~~4.]~~ CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment[~~Reassignment~~], for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review due date or admission, and if the gatekeeper assigns a higher level with a CRP-4, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive to the most recent of the following:

(a) The date of the most recent utilization review due date if the complete utilization review materials were received on or before the utilization review due date; or

(b) The date of admission.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review due date or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-4, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-4, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-4, an appeal may be requested in accordance with Section ~~16 or 17~~ [~~14 or 15~~] of this administrative regulation.

Section 15. [~~Section 13.~~] Reassignment.

(1) If the level of care expires and the child is moved to a different child-caring facility or child-placing agency placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. The most recent Child and Adolescent Needs and Strengths assessment report or a comparable [Aa] assessment of the child; and

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary[; and

~~4. Material as established in Section 2(2)(l) of this administrative regulation].~~

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as established in Section ~~14~~[~~12~~] of this administrative regulation.

Section 16. [~~Section 14.~~] Informal Dispute Resolution.

(1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised within thirty (30) calendar days unless an extension is granted by the secretary or designee:

1. Due to extenuating circumstances that prolong the review; and
2. With notice provided to the contract agent.
- (3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section ~~(17)~~[45] of this administrative regulation.

Section 17.~~[Section 15.]~~ Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

Section 18.~~[Section 16.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a)~~["Child Behavior Checklist for Ages 1 1/2 – 5 (Achenbach)"; 7/00;~~
- (b) ~~"Child Behavior Checklist for Ages 6-18 (Achenbach)"; 6/01;~~
- (c)~~["CRP-2, Children's Review Program Notice of Level of Care Payment Authorization", 01/22[40/48];~~
- (b)~~["CRP-4, Children's Review Program Notice of Level of Care Redetermination", 01/22[44/44];~~
- (c)~~["CRP-5, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", 01/22[40/48];~~
- (d)~~["CRP-6, Children's Review Program Notice of Level of Care Payment Authorization Assignment[Reassignment]", 01/22[40/48];~~
- (e)~~["CRP-7, Children's Review Program Application for Level of Care Payment (ALP)", 07/22[01/22][44/44];~~
- (f)~~["DPP-114T, Transitional Child Caring and Child Placing Level of Care Schedule", 07/22;~~
- (g) ~~"DPP-114, [Private] Child Caring and Child Placing Level of Care Schedule", 02/23[01/22][8/48]; and~~
- (h)~~["DPP-886, Private Child Care Client Inter-agency Referral Form", 10/18;~~
- (i) ~~"DPP-888, [Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and]Instructions for Completing the Annual Cost Report and Time Study for Child Caring and Child Placing Programs and Facilities", 07/22[40/48]; and~~
- (k) ~~"Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", 1990].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

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

APPROVED BY AGENCY: May 10, 2022

FILED WITH LRC: May 11, 2022 at 1:45 p.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: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes levels of care based upon the needs of a child for whom the Cabinet for Health and Family Services has legal responsibility, a payment rate for each level, gatekeeper responsibilities, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program costs analysis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and procedures for placement of a child in the custody of the cabinet with a child-placing agency or child-caring facility, levels of care and related payments, responsibilities and requirements of the

gatekeeper and private providers, and rate setting methodology.

(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 levels of care and associated payments for a child's placement at a child-caring facility or child-placing agency.

(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 the statutes through its incorporation of the methodology regarding the placement of a child in the custody of the cabinet with a child-caring facility or child-placing agency, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the assessment and leveling process the cabinet uses in determining the placement setting for a child in the cabinet's custody from a behavior-based system to a system that better provides needed services and treatment. This amendment revises the standards and per diems associated with the different levels of care. The Family First Prevention Services Act (FFPSA) placed new requirements on Qualified Residential Treatment Programs (QRTPs) that ensure that children are assessed regarding treatment needs and stay in residential or institutional placement settings for only as long as their treatment requires. The FFPSA also placed many other additional requirements on these providers that will decrease the maltreatment that children experience and prevent re-entry into the cabinet's custody. These increased requirements come at a great cost and these providers are already experience staffing crises. Documentation from the Children's Alliance noted that in order for facilities to maintain safe staff to client ratios, they have had to increase direct care wages by over \$2/hour and another \$4/hour to maintain competitive wages for the intense work required of treatment staff. General funds that were appropriated to the Department for Community Based Services for the purpose of providing child welfare prevention services in fiscal year 2021-2022 will be utilized to provide part of these rate increases. This amendment also updates material incorporated by reference to reflect amendments in the administrative regulation.

This administrative regulation is being further amended in response to comments received during the public comment period. In order to address concerns expressed, a transitional form has been developed for temporary use while the state and providers transition from the current levels of care and rates to the new levels and rates, a process estimated to take approximately six months. Language is being added to include therapeutic services, children assessed as level II will require counseling provided by a professional rather than a paraprofessional, and minor technical changes are being made upon request to correct names of forms and better clarify requirements. In addition to the new form, three forms are being amended in response to comments received for consistency with the administrative regulation and to delete duplicative requests for information.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adjust reimbursement for the care of children placed in residential child-caring facilities to ensure children are placed in the most appropriate placement based upon their needs. The Children's Alliance has stressed the urgent need to increase rates so that providers can maintain the staff needed to meet staff to client ratios and keep the children in their care safe. The rate increase is anticipated to assist with provider capacity, thereby better assuring placement options and quality care for children in state custody. Additional amendment was made to include qualified mental health provider placements as approved through the Family First Prevention Services Act. Without these placement options, children risk placement in more costly, restrictive settings or, conversely, in settings that do not otherwise meet the needs of the children. The health and welfare of these children are jeopardized without the payment rate

increase, in addition to threats to federal child welfare funding due to an inadequate service array for children requiring out-of-home care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adjusting placement and level of care options for children in the custody of the cabinet for placement in child-caring facilities and child-placing agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by enhancing placement and levels of care options and increasing some payment rates so that they are more consistent with actual provider costs, thereby better facilitating placement options and preserving the health and welfare of children in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In SFY 2021, 6,430 unique children were placed in a setting according to their level established in 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 children affected by this administrative regulation will have no new action required. Federal law has increased the standards that must be met for some of the entities providing care pursuant to this administrative regulation; therefore, they will be receiving increased per diems for providing care and meeting these new standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Meeting new standards will have a different cost for different affected entities. The cabinet utilized the Annual Audited Cost Report and Time Study to determine rates for providers based on allowable costs. This rate methodology provides for treatments as close as possible to the child’s home geographic area and ensures continuity with families, schools, and communities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Many affected entities will receive a per diem rate increase through this amendment. This rate increase is designed to offset the cost of meeting the higher standards required by recent federal legislation. The purpose of this amendment is to re-design the system through which children in the state’s custody are placed, ensuring higher standards of care and increased services and treatment provided closer to their home communities.

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

(a) Initially: The cabinet projects these rate increases to cost approximately \$30 Million in state General Fund dollars.

(b) On a continuing basis: The cabinet projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include federal Title IV-E (of the Social Security Act) foster care maintenance, general funds, and agency and restricted funds derived from the Temporary Assistance for Needy Family (TANF) block grant and Medicaid. General Funds that were appropriated to the Department for Community Based Services for the specific purpose of providing child welfare prevention services in fiscal year 2021-2022 will be utilized to provide part of this rate increase.

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

administrative regulation.

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

(9) TIERING: Is tiering applied? This administrative regulation does include tiering as different per diem rates and standards are associated with specific levels of care provided to children in the state’s custody.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 622, 672, 675

(2) State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 622, 672, 675

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. This amendment and the increase in per diem rates associated with levels of care are necessary in order to meet the higher standards required by the Family First Prevention Services Act.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter standard, or additional or different responsibilities or requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, specifically the Department for Community Based Services (DCBS), is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1), 42 U.S.C. 622, 672

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? The administrative body has conducted extensive analysis of its budgetary context and service demands to ensure the per diem increases are sustainable within appropriations.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects the per diem increases are within appropriations; however, the administrative body will continually monitor its costs to make any adjustments necessary to maintain a comprehensive service array within available funding.

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

- Revenues (+/-):
Expenditures (+/-):
Other Explanation

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation does not generate cost savings for agencies, but does increase the per diem they receive for the care of children in cabinet custody.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation does not generate cost savings for agencies, but does increase the per diem they receive for the care of children in cabinet custody.

(c) How much will it cost the regulated entities for the first year? Implementation of the Family First Prevention Services Act caused an increase in standards and costs to regulated entities providing care for children; this amendment increases per diems provided to the regulated entities to offset costs.

(d) How much will it cost the regulated entities for subsequent years? Regulated entities have experienced an increase in costs in meeting the standards of the Family First Prevention Services Act. This amendment increases the per diem provided for the care of children in order to offset those costs.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact on regulated entities, but rather seeks to greater assist with the cost of caring for children.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)**

922 KAR 5:070. Adult protective services.

RELATES TO: KRS Chapter 13B, 61.872, 194A.010, 202A.051, 202B.100, Chapter 209, 387.540(1), 42 U.S.C. 1397

STATUTORY AUTHORITY: KRS 194A.050(1), 209.030(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth [Commonwealth] and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.030(1) authorizes the secretary to promulgate administrative regulations necessary for the implementation of adult protective services. This administrative regulation establishes the procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209.020(8).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Authorized agency" is defined by KRS 209.020(17).

(4) "Caretaker" is defined by KRS 209.020(6).

(5) "Emergency" is defined by KRS 209.020(11).

(6) "Employee" is defined by KRS 209.032(1)(a).

(7) "Exploitation" is defined by KRS 209.020(9).

(8) "Investigation" is defined by KRS 209.020(10).

(9) "Mental injury" means a negative impact on the emotional or psychological state of the adult that:

(a) Requires medical or therapeutic treatment;

(b) Is manifested by a behavioral change; or

(c) Caused the [Would cause a reasonable] person to feel fear, distress, humiliation, or ridicule.

(10) "Neglect" is defined by KRS 209.020(16).

(11)[(40)] "Protective services" is defined by KRS 209.020(5).

(12)[(44)] "Records" is defined by KRS 209.020(15).

(13) "Unreasonable confinement" means the unnecessary restriction of an adult's movement through physical or chemical restraints or the unnecessary isolation of an individual.

(14)[(42)] "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).

[(15)][(43)] ["Vulnerable adult services provider" is defined by KRS 209.032(1)(c).]

Section 2. Receiving a Report of Adult Abuse, Neglect, or Exploitation. (1) An individual suspecting that an adult has suffered abuse, neglect, or exploitation shall:

(a) Report to the cabinet in accordance with KRS 209.030(2) and (3); and

(b) Provide the information specified in KRS 209.030(4).

(2) The identity of the reporting individual shall remain confidential in accordance with KRS 209.140.

(3) The cabinet shall make available a twenty-four (24) hour on-call response system for emergency reporting after normal office hours.

(4) The cabinet shall investigate an anonymous report that provides sufficient information regarding the alleged abuse, neglect, or exploitation of an adult.

(5) If a report does not meet criteria for investigation, the cabinet may refer the reporting source to:

(a) Community resources;

(b) General adult services in accordance with 922 KAR 5:090;

or

(c) A domestic [Domestic] violence protective services provider[in accordance with 922 KAR 5:102].

(6) Upon accepting a report for investigation of alleged adult abuse, neglect, or exploitation, the cabinet shall:

(a) Conduct an initial assessment and initiate an investigation in accordance with KRS 209.030(5); and

(b) Take into consideration the safety of the adult when proceeding with the actions necessary to initiate an investigation.

(7) The cabinet shall initiate an investigation upon acceptance of a report of:

(a) Abuse[, as defined in KRS 209.020(8),] if the report alleges an adult:

1. Being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, or kidney areas;

2. Has an injury that:

a. Was [intentionally] inflicted by another person; or

b. Is of unknown origin in a critical area of the body;

3. Was sexually abused;

4. Was subjected to unreasonable confinement;

5. Was subjected to intimidation; or

6. Received a punishment that resulted in pain, injury, or mental injury[Marks that are or have been observed on an adult that another individual allegedly inflicted;

2. Physical abuse inflicted upon the adult resulting in pain or injury, including a mental injury;

3. An adult being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, and kidney areas; or

4. An act of sexual abuse];

(b) Neglect[, as defined in KRS 209.020(16),] of an adult that may result in harm to the health and safety of the adult in the following areas:

1. Hygiene neglect, if the adult has physical symptoms that require treatment due to poor care as a result of:

a. An act or omission by a caretaker; or

b. The absence of a caretaker;

2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of

necessary and appropriate supervision;

3. Food neglect, if an adult shows symptoms of:

- a. Malnutrition;
- b. Dehydration;
- c. Food poisoning; or
- d. Lack of adequate food for a period of time that:
 - (i) Results in physical symptoms; or
 - (ii) Requires treatment;

4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caretaker is not taking appropriate action to eliminate the problem; or

5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that:

- a. Results in an observable decline in the adult's health and welfare;
- b. May be life threatening; or
- c. May result in permanent impairment;

(c) Exploitation of an adult[~~, as defined in KRS 209.020(9),~~] if the report alleges that the perpetrator was a person in a position of trust to the alleged victim and caused:

1. Isolation from friends, relatives, or important information, such as:

- a. Screening telephone calls;
 - b. Denying visitors; or
 - c. Intercepting mail;
2. Physical or emotional dependency;
3. Manipulation;
4. Acquiescence; and

5. Loss of resources to a person in a position of trust to the alleged victim; or

(d) An adult in need of protective services[~~as defined in KRS 209.020(5)~~].

(8) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.

(9) The following criteria shall be used in identifying a report of alleged adult abuse, neglect, or exploitation not requiring an adult protective service investigation:

(a) The report does not meet the statutory definitions of:

- 1. Adult; and
 - 2.a. Abuse;
 - b. Neglect; or
 - c. Exploitation; or
- (b) There is insufficient information to:
- 1. Identify or locate the adult; or
 - 2. Explore leads to identify or locate the adult.

(10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall provide the information specified in KRS 209.030(4):

(a) For a determination of investigation assignment by cabinet supervisory staff;

(b) To the local guardianship office, if the adult is a state guardianship client; and

(c) To appropriate authorized agencies, as specified in KRS 209.030(5).

Section 3. Adult Protective Service Investigations. (1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).

(2) An adult protective service investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.

(3) Information obtained as a result of a protective service investigation shall be kept confidential in accordance with KRS 209.140.

(4) Requests for written information of the protective service investigation, except for court ordered releases, shall be handled through the open records process in accordance with KRS 61.872 and 922 KAR 1:510.

(5) Designated regional cabinet staff shall initiate the investigation of a report of alleged adult abuse, neglect, or exploitation. If the accepted report of alleged adult abuse, neglect,

or exploitation with the expressed permission of the adult indicates:

(a) An emergency, the investigation shall be initiated within four (4) hours[~~one (1) hour~~]; or

(b) A nonemergency, the investigation shall be initiated within forty-eight (48) hours.

(6) If permission is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.

(7)(a) The cabinet shall obtain a written voluntary statement of adult abuse, neglect, or exploitation if the adult, witness, or alleged perpetrator is willing to provide the written statement; and

(b) The cabinet shall inform the adult, witness, or alleged perpetrator that the:

1. Statement may be shared with appropriate authorized agencies; [~~and~~]

2. Statement may be used in an administrative hearing conducted by the cabinet; and

3. Individual may be required to testify in an administrative hearing or in a court of law.

(8) If investigating reports of alleged abuse or neglect of an adult resulting in death, designated regional cabinet staff shall:

- (a) Examine the coroner's or doctor's report;
- (b) Obtain a copy of the death certificate for the case record, if possible;
- (c) Notify the commissioner or designee;
- (d) Consult with appropriate law enforcement, in accordance with KRS 209.030(6)(a) in completing the investigation, if an adult died allegedly as a result of abuse or neglect; and
- (e) Determine if another resident in an alternate care facility is at risk of abuse or neglect, if the findings of an investigation suggest that an adult in the alternate care facility died allegedly as a result of abuse or neglect.

(9) Unless the legal representative is alleged to have abused, neglected, or exploited the adult, a legal representative may act on behalf of an adult for purposes of this administrative regulation.

Section 4. Results of the Investigation. (1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:

- (a) The adult's account of the situation, if possible;
 - (b) The alleged perpetrator's account of the situation, if available;
 - (c) The information supplied by collateral contact;
 - (d) Records and documents;
 - (e) The assessment information;
 - (f) Previous reports involving the adult or alleged perpetrator;
- and

(g) Other information relevant to the protection of an adult.

(2) The findings of the adult protective service investigation shall be:

(a) Shared with appropriate authorized agencies in accordance with KRS 209.030(5); and

(b) Documented on the cabinet's database.

(3) Designated regional cabinet staff shall maintain a written record, as specified in KRS 209.030(5), to include:

(a) Information reported in accordance with KRS 209.030(4); and

- (b) A narrative documenting:
 - 1. The investigation; and
 - 2. Findings of the investigation.

(4) If an issue or concern identified by the cabinet does not require a protective service case being opened, the cabinet may work with the adult to develop an aftercare plan:

- (a) At the consent of the adult; and
- (b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

Section 5. Substantiation Criteria and Submission of Findings.

(1) In determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:

- (a) Adult; and
- (b) 1. Abuse;
- 2. Neglect; or
- 3. Exploitation.

VOLUME 48, NUMBER 12– JUNE 1, 2022

(2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of and substantiate abuse, neglect, or exploitation.

(3) A finding made by cabinet staff shall not be a judicial finding.

(4) Cabinet supervisory staff shall review and approve a finding of an investigation prior to its finalization.

Section 6. Reports of Alleged Adult Abuse, Neglect, or Exploitation Involving an Employee or Compensated Person. If the cabinet receives a report involving an employee or a person acting with the expectation of compensation, cabinet staff shall provide the alleged perpetrator during the investigative interview:

(1) Notice of the basic allegations, which shall be void of any specifics that may compromise the investigation;

(2) Notice that the alleged perpetrator will be provided notification of the findings upon completion of the investigation;

(3) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032; and

(4) A statement that a validated substantiated finding shall be reported on the caregiver misconduct registry established [~~governed~~] by 922 KAR 5:120.

Section 7. Opening a Case. (1) A case may be opened:

(a) As a result of a protective service investigation; or

(b) Upon identification of an adult through a general adult services assessment as being at risk of abuse, neglect, or exploitation.

(2) The decision to open a case shall be based on the:

(a) Voluntary request for, or acceptance of, services by an adult who needs adult protection or general adult services; or

(b) Need for involuntary emergency protective services.

(3) If it has been determined that an adult is incapable of giving consent to receive protective services, the court may assume jurisdiction and issue an ex parte order in accordance with KRS 209.130.

(4) Emergency protective services shall be provided in accordance with KRS 209.100[~~209.440~~].

(5) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the following:

(a) Designated regional cabinet staff;

(b) Family members;

(c) Family friends;

(d) Community partners; or

(e) Other individuals requested by the adult.

(6) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:

(a) Initiate a case plan with the adult; and

(b) Submit the plan to supervisory staff for approval.

Section 8. Referrals for Criminal Prosecution. The cabinet shall refer substantiated reports of adult abuse, neglect, or exploitation to Commonwealth's Attorneys [~~Commonwealth attorneys~~] and county attorneys for consideration of criminal prosecution in accordance with KRS 209.180.

Section 9. Restraining Order or Injunctive Relief. If necessary, designated regional cabinet staff shall contact the cabinet's Office of Legal Services for advice and assistance in obtaining restraining orders or other forms of injunctive relief that may be issued for protection of an adult, in accordance with KRS 209.040.

Section 10. Guardianship or Conservatorship of Disabled Persons. (1) In an attempt to provide appropriate protective services, designated regional cabinet staff shall assess the need for guardianship if an individual appears unable to make an informed choice to:

(a) Manage personal affairs;

(b) Manage financial affairs; or

(c) Carry out the activities of daily living.

(2) Designated regional cabinet staff may assist in protective service situations in seeking out family, friends, or other interested

and qualified individuals who are willing and capable to become guardians.

(3) Upon an order of the court, the cabinet shall file an interdisciplinary evaluation report in accordance with KRS 387.540(1).

Section 11. Involuntary Hospitalization. (1) Designated regional cabinet staff shall encourage the voluntary hospitalization of an adult who needs to secure mental health treatment to avoid serious physical injury or death.

(2) Designated regional cabinet staff may file a petition for involuntary hospitalization in accordance with KRS 202A.051 and 202B.100 if:

(a) The adult lacks the capacity to consent or refuses mental health treatment;

(b) Other resources are not available;

(c) Another petitioner is absent or unavailable; and

(d) Prior cabinet supervisory approval is obtained.

Section 12. Reporting. (1) Reports of alleged adult abuse, neglect, or exploitation shall be maintained in the cabinet's database for:

(a) Use in future investigations; and

(b) Annual reporting requirements as specified in KRS 209.030(12).

(2) The cabinet shall submit a report annually to the Governor and Legislative Research Commission in accordance with KRS 209.030(12)(b).

(a) In addition to the information required by KRS 209.030(12)(b), the summary of reports received by the cabinet shall include for each individual who is the subject of a report:

1. Age;

2. Demographics;

3. Type of abuse;

4. The number of:

a. Accepted reports; and

b. Substantiated reports; and

5. Other information relevant to the protection of an adult.

(b) The information required in paragraph (a) of this subsection shall only be provided if it does not identify an individual.

Section 13. Case Closure and Aftercare Planning. (1) The cabinet's decision to close an adult protective service case shall be based upon:

(a) Evidence that the factors resulting in adult abuse, neglect, or exploitation are resolved to the extent that the adult's needs have been met;

(b) The request of the adult; or

(c) A lack of legal authority to obtain court ordered cooperation from the adult.

(2) An adult shall be:

(a) Notified in writing of the decision to close the protective service case; and

(b) Advised of the right to request a service appeal in accordance with Section 14 of this administrative regulation.

(3) If an adult protective service case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

(4) If the cabinet closes the protective service case in accordance with this section, aftercare planning may link the adult to community resources for the purpose of continuing preventive measures.

Section 14. Appeal Rights. (1) A victim of adult abuse, neglect, or exploitation may request a service appeal in accordance with 922 KAR 1:320, Section 2.

(2) If the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall receive appeal rights [~~appeals~~] in accordance with 922 KAR 5:120.

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

APPROVED BY AGENCY: May 5, 2022

FILED WITH LRC: May 9, 2022 at 1:30 p.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: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes cabinet procedures for an adult protection assessment or investigation of abuse, neglect, or exploitation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish adult protection services procedures.

(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 cabinet procedures for an adult protection assessment or investigation of abuse, neglect, or exploitation.

(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 the statutes by establishing cabinet procedures for an adult protection assessment or investigation of abuse, neglect, or exploitation.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes this administrative regulation by adding defined terms and adding to the list of examples that constitute abuse, ensuring uniformity in the application of terms used.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to keep the administrative regulation from expiring pursuant to KRS 13A.3102 and 3104. The amendment is also necessary to clarify definitions used within the regulation, establish additional acceptance criteria in regards to reports of adult exploitation, and to ensure clarity in the use of statements obtained during an investigation that can be used during administrative hearings.

This administrative regulation is being further amended in response to comments submitted by Legislative Research Commission staff and Kentucky Protection & Advocacy. The administrative regulation is being further amended to include therapeutic treatment, make clarifying changes, and delete an unnecessary definition.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes through its enhancement of cabinet procedures for an adult protection investigation or assessment of abuse, neglect, or exploitation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by clarifying definitions, acceptance criteria for exploitation, and ensuring statements obtained during the investigation can also be used during administrative hearings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: According to The Worker's Information SysTem, TWIST, data for SFY 2021, (TWS-Y165, October 25, 2021) the cabinet received 59,524 reports of alleged abuse, neglect, or exploitation of an adult resulting in almost 10,000 investigations. There were 2,078 substantiations with 1,719 unique victims.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required on the part of regulated entities above and beyond those that are statutorily prescribed or originally prescribed through this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will experience no new or additional cost as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the amendment clarifying definitions and terms, acceptance criteria, and utilization of statements obtained during the course of an investigation.

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

(a) Initially: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The cabinet's provision of adult protective services is funded by the federal Social Services Block Grant, and General Funds.

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1397

(2) State compliance standards. KRS 194A.050(1), 209.030(1)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1397

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by 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 standards, or additional or different responsibilities or requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by the amendment to this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 1397, KRS 194A.050(1), 209.030(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? The amendment to 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? The amendment to this administrative regulation will not generate any revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation establishes cabinet procedures for adult protection assessments and investigations of abuse, neglect, or exploitation. There are no cost savings associated with this amendment.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There are no cost savings associated with this adult protective services amendment.

(c) How much will it cost the regulated entities for the first year? There are no costs associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? There are no costs associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation establishes the procedures for investigation and protection of adults through adult protective services and does not include a major economic impact to regulated entities.

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](#).

STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 4:170. Exceptions to prohibition on electioneering.

RELATES TO: KRS 117.015, 117.235
STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.235(3)(d)[117.235(3)(e)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.235(3)(c) authorizes the board to establish exceptions to the prohibition on electioneering through administrative regulations. This administrative regulation establishes these exceptions.

Section 1. Definitions. (1) "Bumper sticker" means a sticker that measures within fourteen (14) inches by five (5) inches for display on a vehicle bearing a printed message soliciting votes for or against any bona fide candidate or ballot question in a manner which expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question.

(2) "Electioneering" is defined by KRS 117.235(3).

(3) "Polling place" means a voting place established in accordance with the provisions of KRS 117.065.

(4) "Voting room" means a room in which votes are polled as established in accordance with the provisions of KRS 117.235(1).

Section 2. Exceptions to Electioneering. Electioneering shall not include: (1) A bumper sticker affixed to a person's vehicle while parked within or passing through a distance of 100[300] feet of any polling place on the day of any election for a reasonable amount of time in which to vote; or

(2) A voter's use of a personal telecommunications device, computer, or other information technology system, in the voting room to record or transmit electronically an image of his or her own personal likeness and ballot, if the voter does not use the picture:

(a) To solicit signatures to a petition or solicit votes for or against any bona fide candidate or ballot question in a manner that expressly advocates the election or defeat of the candidate or expressly advocates the passage or defeat of the ballot question; and

(b) Within a distance of 100 feet of any entrance to a building in which a voting machine is located if that entrance is:

1. Unlocked; and
2. Used by voters on election day.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Taylor Brown, General Counsel, 140

Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes exceptions to the prohibition on electioneering.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that: KRS 117.015(1) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties and KRS 117.235(3)(c) authorizes the board to establish exceptions to the prohibition on electioneering through administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.235(3)(c) authorizes the board to establish exceptions to the prohibition on electioneering through administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the implementation of KRS 117.235.

(2) If 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 300 foot buffer is amended to 100 feet.

(b) The necessity of the amendment to this administrative regulation: This amendment follows judicial and legislative action regarding the distance of the buffer.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 117.235(3)(c) authorizes the board to establish exceptions to the prohibition on electioneering through administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: It allows Kentucky administrative regulations to square with judicial precedent and current statutory language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect those appearing and working at voting locations.

(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 to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring no costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, county clerks and county boards of election 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 117.015(1) and KRS 117.235(3)(c) require and authorize the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation

generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation amendment will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation amendment will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

BOARDS AND COMMISSIONS

Board of Licensure For Long-Term Care Administrators (Amendment)

201 KAR 6:060. Fees.

RELATES TO: KRS 216A.070, 216A.110(1), 216A.130, 2022 Ky Acts Ch. (House Bill 91)

STATUTORY AUTHORITY: KRS 216A.070(3), (4), 216A.080(1), 216A.110(1), 216A.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(4) requires the board to establish a fee for a temporary permit. KRS 216A.080(1) authorizes the Board to promulgate administrative regulations to establish requirements regarding licensure. KRS 216A.110(1) requires the board to prescribe and collect reasonable fees and charges for processing applications, examination, and issuance of licenses, including renewals. KRS 216A.130 authorizes the board to establish a fee for licensure by reciprocity. This administrative regulation establishes those fees. Further, 2022 Ky Acts Ch. (House Bill 91) provides an exemption in certain circumstances from the fee for issuance or renewal of a license to the spouse of a current member of the Armed Forces of the United States.

Section 1. Application Fee.

(1) The application fee for board review of the application for licensure shall be \$100.

(2) The application fee shall be nonrefundable.

Section 2. Initial Licensure Fee and Licensure by Endorsement Fee.

(1) The initial licensure fee shall be \$150 for an applicant for licensure.

VOLUME 48, NUMBER 12– JUNE 1, 2022

(2) The fee for licensure by endorsement shall be \$300 for an applicant for licensure.

(3) If the applicant successfully completes all requirements for licensure, this fee shall cover licensure for the initial two (2) year period.

Section 3. Temporary Permit Fee. The fee for a temporary permit shall be seventy-five (75) dollars.

Section 4. Biennial Renewal Fee, Late Renewal Fee, Inactive License Fee, Reactivation of Inactive License Fee, and Reinstatement Fee.

(1) The renewal fee shall be \$125.

(2) The late renewal fee shall be \$200.

(3) The inactive license fee shall be seventy-five (75) dollars.

(4) The fee for reactivating an inactive license shall be fifty (50) dollars.

(5) The reinstatement fee shall be \$300.

Section 5. Duplicate License Fee. The duplicate license fee shall be twenty-five (25) dollars.

Section 6. Licensure Verification Fee. The fee for verification of state licensure shall be twenty-five (25) dollars.

Section 7. Continuing Education Fees.

(1) The application fee for preapproval to present a single continuing education program as described in 201 KAR 6:070, Section 5(1)(a), shall be fifty (50) dollars.

(2) The application fee for approval of credit for a single continuing education program not preapproved as described in 201 KAR 6:070, Section 4, shall be twenty-five (25) dollars.

Section 8. Spouse of Current Member of the Armed Forces of the United States. For applications received on or after the effective date of 2022 Ky Acts Ch. ____ (House Bill 91), if the conditions of KRS 12.357 as amended by that Act are met, the spouse of a current member of the Armed Forces of the United States shall not be required to pay the fees required by Sections 1, 2, 3, or 4(1), of this administrative regulation, for issuance of a temporary or regular license or certificate, or shall be issued a refund if the fee was submitted with the application.

KENNETH URLAGE, Board Chair

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 4:08 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. ET on July 25, 2022, at Room 127 CW, 500 Mero Street, 133CE, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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. ET on July 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: Daniel G. Leffel, Executive Advisor, 500 Mero Street, 2NCWK#3, Frankfort, Kentucky 40601, phone (502) 782-5245, fax (502) 564-4818, email daniel.leffel@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Daniel G. Leffel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative

regulation establishes the fees for applications, initial licensure, licensure by endorsement, temporary permits, renewals, late renewals, inactive licensures, reinstatements, duplicate licenses, license verifications, and continuing education. The amendments to this administrative regulation do not increase or establish any fee, nor amend any of the fees already set in this administrative regulation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the fees for applications, initial licensure, licensure by endorsement, temporary permits, renewals, late renewals, inactive licensures, reinstatements, duplicate licenses, license verifications, and continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216A.070(4) requires the board to establish a fee for a temporary permit. KRS 216A.080(1) authorizes the Board to promulgate administrative regulations to establish requirements regarding licensure. KRS 216A.110(1) requires the board to prescribe and collect reasonable fees and charges for processing applications, examination, and issuance of licenses, including renewals. KRS 216A.130 authorizes the board to establish a fee for licensure by reciprocity. This administrative regulation establishes the fees for applications, initial licensure, licensure by endorsement, temporary permits, renewals, late renewals, inactive licensures, reinstatements, duplicate licenses, license verifications, and continuing 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 setting forth the fees for applications, initial licensure, licensure by endorsement, temporary permits, renewals, late renewals, inactive licensures, reinstatements, duplicate licenses, license verifications, and continuing education.

(2) If 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 add applicable statutory references in the fields for "Relates To" (KRS 216A.070, 2022 Ky Acts Ch. ____ (House Bill 91)), "Statutory Authority" (KRS 216A.080(1)), and "Necessity, Function, and Conformity" (KRS 216A.080(1), 2022 Ky Acts Ch. ____ (House Bill 91)). It further adds a provision for conformity with 2022 Ky Acts Ch. ____ (House Bill 91) regarding the exemption in certain circumstances from the fee for issuance or renewal of a license to the spouse of a current member of the Armed Forces of the United States on or after the effective date of that Act. The amendments to this administrative regulation do not increase or establish any fee.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to add applicable statutory references and for conformity with 2022 Ky Acts Ch. ____ (House Bill 91) regarding the exemption in certain circumstances from the fee for issuance or renewal of a license to the spouse of a current member of the Armed Forces of the United States on or after the effective date of that Act.

(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 individuals licensed by the Board (which is approximately 887 as of April 27, 2022), and an unknown number of spouses of current members of the Armed Forces of the United States who may qualify for the fee exemption set forth in KRS 12.357 as amended by 2022 Ky Acts Ch. ____ (House Bill 91).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Current licensees will not have to take any

action to comply with this amendment to the administrative regulation. Applicants on or after the effective date of 2022 Ky Acts Ch. __ (House Bill 91) will have to comply with the provisions of KRS 12.357 as amended by that Act if they seek the exemption in certain circumstances from the fee for issuance or renewal of a license to the spouse of a current member of the Armed Forces of the United States.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost is the amount of any fee required to be paid as set forth in this administrative regulation. The amendments to this administrative regulation do not increase or establish any fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation will result in payment of the required fees for applications, initial licensure, licensure by endorsement, temporary permits, renewals, late renewals, inactive licensures, reinstatements, duplicate licenses, license verifications, and continuing education

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

(a) Initially: Nothing.

(b) On a continuing basis: Nothing.

(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. The amendments to this administrative regulation do not increase or establish any fee.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not increase or establish any fee, nor amend any of the fees already set in this 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

(1) What 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(4), 216A.080(1), KRS 216A.110(1), KRS 216A.130, 2022 Ky Acts Ch. __ (House Bill 91).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amendments to this 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, fire departments, or school districts) for the first year? No revenues are expected to be generated by the amendments to 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 response to 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. The amendments to this administrative regulation add provisions to conform with 2022 Ky Acts Ch. __ (House Bill 91) regarding the exemption in certain circumstances from the fee for issuance or renewal of a license to the spouse of a current member of the Armed Forces of the United States on or after the effective date of that Act. Those amendments will result in cost savings to the regulated individuals who qualify for that exemption, in amounts corresponding to the applicable fees.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The amendments to this administrative regulation add provisions to conform with 2022 Ky Acts Ch. __ (House Bill 91) regarding the exemption in certain circumstances from the fee for issuance or renewal of a license to the spouse of a current member of the Armed Forces of the United States on or after the effective date of that Act. Those amendments will result in cost savings to an unknown number of regulated individuals who qualify for that exemption, in amounts corresponding to the applicable fees (application fee of \$100; initial licensure fee of \$150; licensure by endorsement fee of \$300; temporary permit fee of \$75; renewal fee of \$125).

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? See response to 4(a).

(c) How much will it cost the regulated entities for the first year? The amendments to this administrative regulation will not create any additional costs for regulated entities.

(d) How much will it cost the regulated entities for subsequent years? See response to 4(c).

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The amendments to this administrative regulation will not have a major economic impact, as defined in KRS 13A.010(13).

BOARDS AND COMMISSIONS

Board of Licensure For Long-Term Care Administrators (Amendment)

201 KAR 6:060. Fees.

RELATES TO: KRS 216A.070, 216A.110(1), 216A.130, 2022 Ky Acts Ch. __ (House Bill 91)

STATUTORY AUTHORITY: KRS 216A.070(3), (4), 216A.080(1), 216A.110(1), 216A.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(4) requires the board to establish a fee for a temporary permit. KRS 216A.080(1) authorizes the Board to promulgate administrative regulations to establish requirements regarding licensure. KRS 216A.110(1) requires the board to prescribe and collect reasonable fees and charges for processing applications, examination, and issuance of licenses, including renewals. KRS 216A.130 authorizes the board to establish a fee for licensure by reciprocity. This administrative regulation establishes those fees. Further, 2022 Ky Acts Ch. __ (House Bill 91) provides an exemption in certain circumstances from the fee for issuance or renewal of a license to the spouse of a current member of the Armed Forces of the United States.

Section 1. Application Fee.

- (1) The application fee for board review of the application for licensure shall be \$100.
- (2) The application fee shall be nonrefundable.

Section 2. Initial Licensure Fee and Licensure by Endorsement Fee.

- (1) The initial licensure fee shall be \$150 for an applicant for licensure.
- (2) The fee for licensure by endorsement shall be \$300 for an applicant for licensure.
- (3) If the applicant successfully completes all requirements for licensure, this fee shall cover licensure for the initial two (2) year period.

Section 3. Temporary Permit Fee. The fee for a temporary permit shall be seventy-five (75) dollars.

Section 4. Biennial Renewal Fee, Late Renewal Fee, Inactive License Fee, Reactivation of Inactive License Fee, and Reinstatement Fee.

- (1) The renewal fee shall be \$125.
- (2) The late renewal fee shall be \$200.
- (3) The inactive license fee shall be seventy-five (75) dollars.
- (4) The fee for reactivating an inactive license shall be fifty (50) dollars.
- (5) The reinstatement fee shall be \$300.

Section 5. Duplicate License Fee. The duplicate license fee shall be twenty-five (25) dollars.

Section 6. Licensure Verification Fee. The fee for verification of state licensure shall be twenty-five (25) dollars.

Section 7. Continuing Education Fees.

- (1) The application fee for preapproval to present a single continuing education program as described in 201 KAR 6:070, Section 5(1)(a), shall be fifty (50) dollars.
- (2) The application fee for approval of credit for a single continuing education program not preapproved as described in 201 KAR 6:070, Section 4, shall be twenty-five (25) dollars.

Section 8. Spouse of Current Member of the Armed Forces of the United States. For applications received on or after the effective date of 2022 Ky Acts Ch. ___ (House Bill 91), if the conditions of KRS 12.357 as amended by that Act are met, the spouse of a current member of the Armed Forces of the United States shall not be required to pay the fees required by Sections 1, 2, 3, or 4(1), of this administrative regulation, for issuance of a temporary or regular license or certificate, or shall be issued a refund if the fee was submitted with the application.

KENNETH URLAGE, Board Chair

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 4:08 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. ET on July 25, 2022, at Room 127 CW, 500 Mero Street, 133CE, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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. ET on July 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: Daniel G. Leffel, Executive Advisor, 500 Mero Street, 2NCWK#3, Frankfort, Kentucky 40601, phone (502) 782-5245, fax (502) 564-4818, email daniel.leffel@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Daniel G. Leffel

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the fees for applications, initial licensure, licensure by endorsement, temporary permits, renewals, late renewals, inactive licensures, reinstatements, duplicate licenses, license verifications, and continuing education. The amendments to this administrative regulation do not increase or establish any fee, nor amend any of the fees already set in this administrative regulation.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the fees for applications, initial licensure, licensure by endorsement, temporary permits, renewals, late renewals, inactive licensures, reinstatements, duplicate licenses, license verifications, and continuing education.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216A.070(4) requires the board to establish a fee for a temporary permit. KRS 216A.080(1) authorizes the Board to promulgate administrative regulations to establish requirements regarding licensure. KRS 216A.110(1) requires the board to prescribe and collect reasonable fees and charges for processing applications, examination, and issuance of licenses, including renewals. KRS 216A.130 authorizes the board to establish a fee for licensure by reciprocity. This administrative regulation establishes the fees for applications, initial licensure, licensure by endorsement, temporary permits, renewals, late renewals, inactive licensures, reinstatements, duplicate licenses, license verifications, and continuing 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 setting forth the fees for applications, initial licensure, licensure by endorsement, temporary permits, renewals, late renewals, inactive licensures, reinstatements, duplicate licenses, license verifications, and continuing education.
- (2) If 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 add applicable statutory references in the fields for "Relates To" (KRS 216A.070, 2022 Ky Acts Ch. ___ (House Bill 91)), "Statutory Authority" (KRS 216A.080(1)), and "Necessity, Function, and Conformity" (KRS 216A.080(1), 2022 Ky Acts Ch. ___ (House Bill 91)). It further adds a provision for conformity with 2022 Ky Acts Ch. ___ (House Bill 91) regarding the exemption in certain circumstances from the fee for issuance or renewal of a license to the spouse of a current member of the Armed Forces of the United States on or after the effective date of that Act. The amendments to this administrative regulation do not increase or establish any fee.
 - (b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to add applicable statutory references and for conformity with 2022 Ky Acts Ch. ___ (House Bill 91) regarding the exemption in certain circumstances from the fee for issuance or renewal of a license to the spouse of a current member of the Armed Forces of the United States on or after the effective date of that Act.
 - (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 individuals licensed by the Board (which is approximately 887 as of April 27, 2022), and an unknown number of spouses of current members of

the Armed Forces of the United States who may qualify for the fee exemption set forth in KRS 12.357 as amended by 2022 Ky Acts Ch. __ (House Bill 91).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Current licensees will not have to take any action to comply with this amendment to the administrative regulation. Applicants on or after the effective date of 2022 Ky Acts Ch. __ (House Bill 91) will have to comply with the provisions of KRS 12.357 as amended by that Act if they seek the exemption in certain circumstances from the fee for issuance or renewal of a license to the spouse of a current member of the Armed Forces of the United States.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost is the amount of any fee required to be paid as set forth in this administrative regulation. The amendments to this administrative regulation do not increase or establish any fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation will result in payment of the required fees for applications, initial licensure, licensure by endorsement, temporary permits, renewals, late renewals, inactive licensures, reinstatements, duplicate licenses, license verifications, and continuing education

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

(a) Initially: Nothing.

(b) On a continuing basis: Nothing.

(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. The amendments to this administrative regulation do not increase or establish any fee.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation do not increase or establish any fee, nor amend any of the fees already set in this 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

(1) What 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(4), 216A.080(1), KRS 216A.110(1), KRS 216A.130, 2022 Ky Acts Ch. __ (House Bill 91).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amendments to this 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, fire departments, or school districts) for the first year? No revenues are expected to be generated by the amendments to 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 response to 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. The amendments to this administrative regulation add provisions to conform with 2022 Ky Acts Ch. __ (House Bill 91) regarding the exemption in certain circumstances from the fee for issuance or renewal of a license to the spouse of a current member of the Armed Forces of the United States on or after the effective date of that Act. Those amendments will result in cost savings to the regulated individuals who qualify for that exemption, in amounts corresponding to the applicable fees.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The amendments to this administrative regulation add provisions to conform with 2022 Ky Acts Ch. __ (House Bill 91) regarding the exemption in certain circumstances from the fee for issuance or renewal of a license to the spouse of a current member of the Armed Forces of the United States on or after the effective date of that Act. Those amendments will result in cost savings to an unknown number of regulated individuals who qualify for that exemption, in amounts corresponding to the applicable fees (application fee of \$100; initial licensure fee of \$150; licensure by endorsement fee of \$300; temporary permit fee of \$75; renewal fee of \$125).

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? See response to 4(a).

(c) How much will it cost the regulated entities for the first year? The amendments to this administrative regulation will not create any additional costs for regulated entities.

(d) How much will it cost the regulated entities for subsequent years? See response to 4(c).

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The amendments to this administrative regulation will not have a major economic impact, as defined in KRS 13A.010(13).

BOARDS AND COMMISSIONS

Board of Architects (Amendment)

201 KAR 19:035. Qualifications for examination and licensure.

RELATES TO: KRS 323.050(2), (3), 323.060, 323.120(1)(a)-(j) STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.050(2) authorizes the board to prescribe the qualifications and experience requirements for licensure. KRS 323.210(1)(b) and (2) require the board to promulgate administrative regulations

governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his or her application has been filed. This administrative regulation establishes the prerequisites for taking the examination and obtaining a license.

Section 1. Eligibility to Take the Architect Registration Examination (ARE). A person who possesses the qualifications prescribed in KRS 323.050, and this administrative regulation, shall be eligible to take the examination.

Section 2. General Requirements.

(1)(a) The board ~~may~~shall verify the good moral character of an applicant for examination with employers and registered architects who have knowledge of the applicant's moral character.

(b) An applicant shall not be considered to be of good moral character if the applicant has:

1. Committed an act specified in KRS 323.120(1)(a) through (i);
2. Chronic alcoholism, persistent drug abuse, or an act of behavior that would, if the applicant were licensed, jeopardize or impair the applicant's judgment to meet professional responsibility as an architect and to act to protect the public welfare and safety; or

3. Violated a provision of KRS Chapter 323 or 201 KAR Chapter 19 either before or after admission to the examination.

(c) If an applicant has violated the registration laws of another jurisdiction, the board shall determine whether the violation adversely affected the moral character of the applicant.

(2) To be eligible for examination, an applicant shall submit to the board college transcripts and verification from the National Council of Architectural Registration Boards (NCARB) that the applicant has:

(a) Met the requirements of KRS 323.050 and this administrative regulation;

(b) Enrolled in NCARB's Architectural Experience Program (AXP)~~[Intern Development Program]~~ specified in Section 4 of this administrative regulation by establishing an NCARB record; and

(c) Enrolled and is eligible as an applicant with this board to take the ARE.

(3) The documentation that includes the college transcripts required by subsection (2) of this section shall be verified, compiled, and transmitted in bound record form by the NCARB.

Section 3. Education Requirements. An applicant who has met the requirements of Section 2 of this administrative regulation shall hold a degree in architecture from a degree program that has been accredited by the National Architectural Accrediting Board (NAAB) not later than two (2) years after termination of enrollment.

Section 4. Training Requirements for Licensure.

(1) An applicant who has passed the examination shall have successfully completed the Architectural Experience Program (AXP)~~[Intern Development Program]~~ training requirements as provided by NCARB Architectural Experience Program (AXP)~~[Intern Development Program]~~ Guidelines prior to final application for licensure.

(2) The documentation of experience obtained by the completion of the Architectural Experience Program (AXP)~~[Intern Development Program]~~ training requirements required by subsection (1) of this section and college transcripts shall be verified, compiled, and transmitted in bound record form by the NCARB.

Section 5. Incorporation by Reference.

(1) "Architectural Experience Program Guidelines", 2020~~[Intern Development Program Guidelines 2015]~~ Edition, National Council of Architectural Registration Boards, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4:00 p.m.

STEPHANIE R MCCRERY, Board President

CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: May 3, 2022

FILED WITH LRC: May 5, 2022 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2022, at 10:30 a.m. Eastern Time at the Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507. 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 July 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 246-2431, email boa.irc@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation establishes the prerequisites for taking the examination and obtaining an architect license in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to specify the eligibility requirement for examination, and to detail the general provisions of becoming a Kentucky licensed architect.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 323.210 (1)(b), (2) which requires the board to promulgate administrative regulation governing the contents and conduct of examinations, the method and time for filing application, and the time with which and applicant shall be examined after his application has been filed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information on the qualifications for eligibility for examination, to meet requirements necessary for becoming a Kentucky licensed architect.

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

(a) How the amendment will change this existing administrative regulation: The amendment will give the Kentucky Board of Architects the discretion of verifying an examination applicant is of good moral character rather than the mandatory obligation of verifying it. The amendment will also update outdated titles and editions of referenced materials.

(b) The necessity of the amendment to this administrative regulation: The Kentucky Board of Architects will be able to review the good moral character of an applicant only when it is deemed necessary making the application process more streamlined and efficient.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute allows the Board to promulgate all regulations pertaining to the review of applicant's qualifications.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this regulation will provide an efficient review of an applicant's qualifications, while maintaining the comprehensive evaluation of their qualifications. The amendment will also allow the most recent titles and editions of programs and materials to ensure an applicant's compliance

with the application requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board estimates individuals seeking application for examination and licensure is approximately fifteen (15) annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entity will be required to meet educational and training requirements and be of good moral character. The entity will not be required to meet any new or additional education, training, or moral requirements in the amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost will be based on the college the entities select. There will be no additional cost to the entity to obtain the educational or training requirements in the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will acquire the mandated education and training needed to be eligible to begin taking the Architect Registration Examination (ARE).

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

(a) Initially: No new cost will be incurred.

(b) On a continuing basis: No new cost will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(7) Provide an assessment of whether an 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 is required to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate as the regulation applies only to individuals seeking examination and licensure in Kentucky.

FISCAL NOTE

(1) What 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 individuals seeking application for examination with the Kentucky Board of Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(1)(b) and (2) authorizes the action taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation does not directly affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated with this administrative regulation 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? No revenue will be generated with this administrative

regulation in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. This administrative regulation will not directly affect expenditures of the regulated entities.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not produce any cost savings of the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not produce any cost savings of the regulated entities at any time.

(c) How much will it cost the regulated entities for the first year? There will be no direct cost to the entity however, meeting the educational requirement will be based on the college or university the entity selects.

(d) How much will it cost the regulated entities for subsequent years? There will be no direct cost to the entity however, meeting the educational requirement will be based on the college or university the entity selects.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: Post-educational cost cannot be determined due to the variables associated with acquiring architect degree throughout the United States.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact.

BOARDS AND COMMISSIONS

**Board of Architects
(Amendment)**

201 KAR 19:087. Continuing education.

RELATES TO: KRS 323.110(1), 323.120(1)(g), 323.210(3)

STATUTORY AUTHORITY: KRS 323.210(2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(3) authorizes the board to establish continuing education requirements. This administrative regulation establishes continuing education requirements and establishes standards for the licensing of an architect for board licensees.

Section 1. Definitions.

(1) "Continuing education" or "CE" means post-licensure learning that enables a licensed architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public's health, safety, and welfare.

(2) "Continuing education hour" or "CEH" means a:

VOLUME 48, NUMBER 12– JUNE 1, 2022

(a) Unit equal to sixty (60) minutes clock time for the taking of an examination; or

(b) Customary time of completion prescribed by an examination vendor, if the board finds the time to be reasonable.

(3) "Health, safety, and welfare subjects" means technical and professional subjects that the board finds appropriate to safeguard the public and that are within the following enumerated areas necessary for the proper evaluation, design, construction, and utilization of buildings and the built environment:

(a) Building Systems: Structural, Mechanical, Electrical, Plumbing, Communications, Security, Fire Protection;

(b) Construction Contract Administration: Contracts, Bidding, Contract Negotiations;

(c) Construction Documents: Drawings, Specifications, Delivery Methods;

(d) Design: Urban Planning, Master Planning, Building Design, Site Design, Interiors, Safety and Security Measures;

(e) Environmental: Energy Efficiency, Sustainability, Natural Resources, Natural Hazards, Hazardous Materials, Weatherproofing, Insulation;

(f) Legal: Laws, Codes, Zoning, Regulations, Standards, Life Safety, Accessibility, Ethics, Insurance to protect Owners and Public;

(g) Materials and Methods: Construction Systems, Products, Finishes, Furnishings, Equipment;

(h) Occupant Comfort: Air Quality, Lighting, Acoustics, Ergonomics;

(i) Pre-Design: Land Use Analysis, Programming, Site Selection, Site and Soils Analysis, Surveying; or

(j) Preservation: Historic, Reuse, Adaptation.

(4) "Relevant topic" means an area which is particularly focused on the health, safety, and welfare of the public utilizing structured educational activities intended to increase or update the architect's knowledge and competence in health, safety, and welfare subjects.

(5) "Structured educational activities" means educational activities in which at least seventy-five (75) percent of an activity's content and instructional time is devoted to health, safety, and welfare subjects related to the practice of architecture, including courses of study or other activities under the areas identified as health, safety, and welfare subjects and provided by qualified individuals or organizations, whether delivered by direct contact or distance learning methods.

Section 2. Purpose. The purpose of this continuing education program is to ensure that all licensed architects remain informed on technical and professional subjects that the board finds appropriate to safeguard life, health, property, and welfare of the public.

Section 3. Scope and Exemptions.

(1) To annually renew a license, an architect licensed in Kentucky shall comply with this administrative regulation unless the licensee is exempted by one (1) of the following reasons:

(a) The licensee is exempted as a first-[]-time registrant by:

1. Examination; or

2. Reciprocity;

(b) The licensee has applied for or is renewing as an architect emeritus who:

1. Is at least sixty-five (65) years old;

2. Has requested architect emeritus status at the beginning of the license renewal period; and

3. Has retired from practice in all jurisdictions and is not conducting an active practice in any jurisdiction;

(c) The licensee is a civilian who serves on active duty in the United States Armed Forces for a period of time exceeding ninety (90) consecutive days during the annual report period; or

(d) The licensee is a registrant of another National Council of Architectural Registration Boards' (NCARB) jurisdiction that has a required continuing education program, if:

1. It accepts Kentucky requirements to satisfy its continuing education requirements; and

2. The licensee certifies that all requirements for current

continuing education compliance and registration have been met in that jurisdiction.

(2) A hardship case may be considered by the board.

Section 4. Requirements.

(1) A licensed Kentucky architect shall:

(a) Obtain a total of at least twelve (12) CEHs per year; and

(b) Report these credits as a condition for license renewal.

(2) Beginning with calendar year 2017, the continuing education requirement of subsection (1) of this section shall be satisfied during the period beginning January 1 and ending December 31 of the previous calendar year.

(3) CEHs shall not be carried over into the next reporting period for credit.

(4) A minimum of twelve (12) CEHs shall consist of structured educational activities on relevant topics addressing health, safety, and welfare subjects as referenced in Section 1(3) of this administrative regulation.

Section 5. Reporting and Recordkeeping.

(1) The following shall be submitted by an applicant for renewal of a license:

(a) A completed continuing education certification statement of compliance with the annual continuing education requirements portion of the completed Architect License Renewal Application;

(b) The completed Architect License Renewal Application or online renewal on the board's Web site at <http://boa.ky.gov>; and

(c) The renewal fee required by 201 KAR 19:255[19:085].

(2) The following shall be submitted by an applicant for the reinstatement of a license previously administratively revoked:

(a) A completed continuing education certification statement of compliance with the annual continuing education requirements portion of the completed and notarized Architect License Reinstatement-Restoration Application listing the completed courses for the number of credits required. A reinstatement of a license revoked for one (1) year or less shall require reporting twelve (12) CEHs minimum. A reinstatement of a license revoked for one (1) year or more shall require reporting twenty-four (24) CEHs minimum;

(b) The completed and notarized Architect License Reinstatement-Restoration Application;

(c) The reinstatement application fee plus the applicable annual renewal fee required by 201 KAR 19:255[19:085] for each year since the date of revocation; and

(d) A two (2) inch by two (2) inch or larger passport quality color photograph of the applicant affixed to the application.

(3) The following shall be submitted by an applicant for the restoration of a license previously voluntarily surrendered:

(a) A completed continuing education certification statement of compliance with the annual continuing education requirements portion of the completed and notarized Architect License Reinstatement-Restoration Application listing the completed courses for the number of credits required. The restoration of a license voluntarily surrendered for one (1) year or less shall require reporting twelve (12) CEHs minimum. The restoration of a license voluntarily surrendered for more than one (1) year shall require reporting twenty-four (24) CEHs minimum;

(b) The completed and notarized Architect License Reinstatement-Restoration Application;

(c) The applicable restoration application fee plus the current annual renewal fee required by 201 KAR 19:255[19:085]; and

(d) A two (2) inch by two (2) inch or larger passport quality color photograph of the applicant affixed to the application.

(4) An incomplete submission shall be returned to the applicant.

(5) A random sample of annual reports of architect's continuing education certifications shall be audited to ensure accuracy and compliance. Any licensee audited shall submit a completed Architect Continuing Education Annual Report issued by the board with proof of continuing education activities attached.

(6) The licensee shall:

(a) Be responsible for retaining proof of participation in continuing education activities;

VOLUME 48, NUMBER 12– JUNE 1, 2022

(b) Retain a record for continuing education for a period of five (5) years from the date of submission of the annual report to the board; and

(c) Furnish copies of continuing education records on the request of the board for audit purposes.

(7) Proof of participation in continuing education activities shall include:

(a) A log showing the:

- 1. Activity claimed;
- 2. Sponsoring organization;
- 3. Location; and
- 4. Duration; and

(b) One (1) of the following:

- 1. An attendance certificate;
- 2. ~~(e)~~ A signed attendance receipt;
- 3. ~~(d)~~ A paid receipt; ~~and~~
- 4. ~~(e)~~ A proof of participation document ~~[list of attendees]~~ signed by a person in charge of the activity; or
- 5. Other documentation accepted at the discretion of the Board.

(8) Disallowances. If continuing education credit is disallowed, the licensee shall have thirty (30) calendar days after notification to:

- (a) Substantiate the original claim; or
- (b) Earn other continuing education credit to meet the minimum requirements.

Section 6. Noncompliance and Sanctions.

(1) Failure to fulfill the continuing education requirements, file the required Architect License Renewal Application or the Architect License Reinstatement-Restoration Application, properly completed and signed, or file the Architect Continuing Education Annual Report as required by an audit, properly completed and signed, shall result in the board imposing any combination of the following sanctions:

- (a) Nonrenewal;
- (b) Denial of reinstatement or restoration;
- (c) Probation; or
- (d) Suspension of the license and the issuance of a reprimand.

(2) A licensee found to be deficient on CEHs following a continuing education audit shall be fined a civil penalty of \$250 for the first deficient CEH and fifty (50) dollars for each deficient CEH thereafter.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Architect Continuing Education Annual Report", 2015;
- (b) "Architect License Renewal Application", 2020~~[2015]~~; and
- (c) "Architect License Reinstatement-Restoration Application", December 2016~~[2015]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4:00 p.m.

STEPHANIE R MCCRERY, Board President
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: May 3, 2022
FILED WITH LRC: May 5, 2022 at 2:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2022, at 10:30 a.m. Eastern Time at the Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507. 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 July 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 246-2431, email boa.irc@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation institutes the Board's requirements for continuing education, and outlines requirements for the licensing category of architect emeritus.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the specific requirements, exemptions, and sanctions for noncompliance, of continuing education, and to outline requirements for the licensing category of architect emeritus.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 323.210(3) that describes the function of the Board and the authority for promulgating appropriate administrative regulations requiring mandatory continuing education for licensed architects. As well as establishing the licensing category of architect emeritus and outlining the renewal and continuing education requirements for the architect emeritus license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures the Kentucky licensed architects remain informed and aware of current and changing technical and professional standards to safeguard the life, health, property, and welfare of the public. This administrative regulation also defines the requirements for licensees to qualify as an architect emeritus.

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

(a) How the amendment will change this existing administrative regulation: The amendment will update the process for reporting continuing education courses. Allowing the regulated entities greater flexibility in providing proof of participation in continuing education activities.

(b) The necessity of the amendment to this administrative regulation: The amendment will improve efficiency in the Board's review of continuing education compliance of the regulated entities.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute allows the Board to promulgate all regulations pertaining to the requirement and ensuring compliance, of licensed architects participation in continuing education.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this regulation will provide an efficient review of the regulated entity's continuing education compliance while maintaining the comprehensive evaluation of their submission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky licensed architects, approximately 2900 annually.

(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: Each entity shall continue to obtain the following: 12 hours of continuing education during the period beginning January 1 and ending December 31 of each calendar year; hours shall be structured, and designated as Health, Safety, and Welfare, subjects; report their compliance with the regulation

annually when renewing their Kentucky architect license. Each entity wishing to renew an architect emeritus license, shall meet age and employment status requirements. However, as amended, the regulated entities, will have greater flexibility in providing proof of participation in continuing education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no direct cost to the entity however some 3rd parties do charge a fee for attendance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The entities shall be better informed, and aware of current standards of practice to ensure the public's health, safety, and welfare.

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

(a) Initially: No new cost will be incurred.

(b) On a continuing basis: No new cost will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(7) Provide an assessment of whether an 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 is required to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate as the regulation applies only to Kentucky licensed architects.

FISCAL NOTE

(1) What 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 Kentucky licensed architects by outlining the requirements for continuing education, and architect emeritus licensees by outlining certain qualifications for the status.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(2), (3) authorizes the action taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation does not directly affect expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. This administrative regulation will not directly affect expenditures of the regulated entities.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not produce any cost savings of the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not produce any cost savings of the regulated entities at any time.

(c) How much will it cost the regulated entities for the first year? The regulated entities have an option of taking free or paid third-party continuing education.

(d) How much will it cost the regulated entities for subsequent years? The regulated entities have an option of taking free or paid third-party continuing education.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation: Because the regulated entities reside throughout the United States and therefore take continuing education throughout the United States, it is not possible to determine the cost of the multitude of third-party continuing education classes taken.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE
SYSTEM
Kentucky Board of Emergency Medical Services
(Amendment)**

202 KAR 7:560. Ground vehicle staff.

RELATES TO: KRS 189.910-189.950, 311A.030, 311A.190
STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

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

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

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

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

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

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

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

VOLUME 48, NUMBER 12– JUNE 1, 2022

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

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

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

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

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

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

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

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

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

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

(b) An attendant licensed as a paramedic; and

(c) One (1) licensed:

1. Registered nurse;
2. Advanced practice registered nurse;
3. Respiratory therapist;
4. Physician assistant;
5. Physician; or
6. Additional paramedic.

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

1. A driver certified as an emergency medical responder (EMR)[~~technician (EMT)~~];

2. A primary attendant licensed as a registered nurse; and

3. One (1) additional attendant licensed as a:

- a. Registered nurse;
- b. Advanced practice registered nurse;
- c. Respiratory therapist;
- d. Physician assistant;
- e. Physician; or
- f. Paramedic.

(b) Any attendant hired after January 1, 2020 shall acquire and maintain within one (1) year of hire, a specialty certification in Pediatric Critical Care or Neonatal Critical Care acquired through successful completion of a validated examination administered by an independent entity not associated with a specific course or program of education.

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

1. A driver certified as an emergency medical responder (EMR)[~~technician (EMT)~~];

2. A primary attendant licensed as a registered nurse; and

3. One (1) additional attendant licensed as:

- a. An advanced practice registered nurse;
- b. A respiratory therapist;
- c. A physician assistant;
- d. A physician;
- e. A registered nurse; or
- f. Paramedic.

(b) Any attendant hired after January 1, 2020 shall acquire and maintain within one (1) year of hire, a specialty certification in Pediatric Critical Care or Neonatal Critical Care acquired through successful completion of a validated examination administered by an independent entity not associated with a specific course or program of education.

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

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

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

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

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

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

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

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

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

(a) Emergency medical responder (EMR); or

(b) Emergency medical technician (EMT).

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

(a) A certified Advanced EMT; or

(b) A licensed paramedic.

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

(a) Emergency medical responder (EMR); or

(b) Emergency medical technician (EMT).

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

(a) A certified Advanced EMT; or

(b) A licensed paramedic.

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

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

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

(a) Disasters;

(b) Mass casualty incidents; or

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

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

~~(17)~~[(18)] Alternative staff shall not operate a licensed vehicle unless the:

(a) Agency administrator so directs; and

(b) Vehicle is out of service and not subject to an emergency response.

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

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

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

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

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

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

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

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

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

Section 3. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS Web site or similar

publication of the board, or otherwise disseminate, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: April 21, 2022

FILED WITH LRC: May 3, 2022 at 12:235 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 27, 2022 at 1:00 p.m. ET at the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509. 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 July 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: John K. Wood, counsel for the Kentucky Board of Emergency Medical Services, 163 East Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, email administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John K. Wood

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:560 establishes the minimum staffing requirements for ground vehicles.

(b) The necessity of this administrative regulation: KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.030 by establishing the minimum staffing requirements for ground vehicles.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes the minimum staffing requirements for ground vehicles.

(2) If 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 allow emergency medical responders (EMRs) to drive ambulances.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to mitigate staffing concerns and ensure that ambulances are adequately staffed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.030 requires the Board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes the minimum staffing requirements for ground vehicles.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the minimum staffing requirements for ground vehicles.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky Licensed Ground Ambulance Services and Kentucky Medical First Response agencies.

(4) Provide an analysis of how the entities identified in

question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All Kentucky Licensed Ground Ambulance Services and Kentucky Medical First Response agencies will be permitted to assign emergency medical responders as ambulance drivers.

(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 any entity identified in question (3), other than administrative costs that may be incurred in recruiting and maintaining qualified attendants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities affected will benefit by being permitted to assign emergency medical responders (EMRs) as ambulance drivers.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Board shall pay for all administrative costs of reviewing compliance with applicable requirements.

(a) Initially: There will be no cost to any entity identified in question (3), other than administrative costs that may be incurred in recruiting and maintaining qualified attendants.

(b) On a continuing basis: There will be no cost to any entity identified in question (3), other than administrative costs that may be incurred in recruiting and maintaining qualified attendants.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Emergency Medical Services is a state agency that receives its annual budget from the state government.

(7) Provide an assessment of whether an 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 establishes any fees or directly or indirectly increases any fees: This regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because the amendment establishes minimum staffing certification requirements for ground vehicles, which apply to all affected entities to ensure that all affected personnel meet the minimum qualifications.

FISCAL NOTE

(1) What 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 administrative regulation will impact all Kentucky Licensed Ground Ambulance Services and Kentucky Medical First Response agencies.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.030. No federal statutes necessitate this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on state or local government.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate any cost savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any cost savings.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not impose any costs.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not impose any costs.

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

Cost Savings (+/-): This administrative regulation will not generate any cost savings.

Expenditures (+/-): This administrative regulation will not impose any costs.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. This administrative regulation will not have a major economic impact.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)**

702 KAR 1:140. Student records; hearing procedures.

RELATES TO: KRS 160.730, 20 U.S.C. 1232g (a)(2)

STATUTORY AUTHORITY: KRS 156.070, 160.730

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.730 provides for parents or eligible students to challenge the content of a student education record on the grounds [to ensure] that the information contained in the record or report is not inaccurate, misleading, or otherwise in violation of privacy or other rights of the student. KRS 160.370 also mandates that the Department of Education establish by administrative regulation hearing procedures that may be utilized to challenge the content of a student education record when no agreement can be reached. The Family Educational Rights and Privacy Act (FERPA) mandates a parent or eligible student has the opportunity for a hearing to challenge the content of the student's education records on the grounds that the information is inaccurate, misleading, or in violation of privacy rights of the student. This administrative regulation establishes those hearing procedures.

Section 1. If a school district denies the [decides not to comply with a] request of a parent or eligible student [student's parent(s) or legal guardian] to amend the education record of the student, the school district shall notify the student's parent or eligible student [parent(s) or guardian] of the decision and advise them of the [their] right to a hearing to challenge the information contained

in the education record and alleged [believed] to be inaccurate, misleading, inappropriate, or in violation of the student's rights.

Section 2. Hearing Procedures. (1) Upon request of a parent or eligible student, the school district shall conduct [arrange for] a hearing to be held within thirty (30) days after the request for hearing and notify the [student's parent(s) or guardian], reasonably in advance, of the date, place, and time of the hearing.

(2) The hearing shall be conducted by any individual who is a disinterested party and is appointed by the superintendent to conduct the hearing [a hearing officer who is a disinterested party and is a certified official of the district appointed by the superintendent].

(3) The hearing shall be confidential [private]. Persons other than the student, parent(s), witnesses, and counsel shall not be admitted into the hearing.

(4) The hearing official appointed by the superintendent [officer] shall hear evidence from the school staff and the parent or eligible student [student's parent(s) or guardian] to determine any points of disagreement regarding the education records.

(5) The parent or eligible student [student's parent(s) or guardian] shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records. The parent or eligible student [parent(s) or guardian] may be assisted by one (1) or more individuals, including an attorney, at their expense.

(6) The hearing official appointed by the superintendent [officer] shall make a determination after hearing the evidence in writing within ten (10) working days following the close of the hearing. The hearing official appointed by the superintendent [officer] shall make a determination based solely on the evidence presented at the hearing, and shall include a summary of the evidence and the reason for the decision. The parties to the hearing shall be provided a copy of the [hearing officer's] decision.

Section 3. Posthearing Procedures. (1) If as a result of the hearing, the hearing official appointed by the superintendent [officer] decides [after the hearing] the challenged information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the hearing official [officer] shall inform the parent or eligible student [student's parent(s) or guardian] of the right to place a statement in the education record commenting on the contested information or stating why he disagrees with the decision of the hearing official [officer]. The statement shall be maintained as a part of the student's education records as long as the contested portion is maintained. If the school district discloses the contested portions of the education record, it shall also disclose the statement.

(2) If, as a result of the hearing, the hearing official appointed by the superintendent [officer] decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school district shall amend the education record accordingly and inform in writing the parent or eligible student [student's parent(s) or guardian] of the amendment.

Section 4. Alternative Hearing Procedures. If a school district has an education record [a records] hearing policy and procedure that provides a substantially equivalent level of due process protection as provided in this administrative regulation, the school district may [elect to] submit its policy on education records hearing procedure to the Department of Education, Office of Legal Services, for its review and approval as to compliance with this administrative regulation.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON GLASS, Commissioner
LU YOUNG, Chair

APPROVED BY AGENCY: May 4, 2022
FILED WITH LRC: May 10, 2022 at 12:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022 at 10:00 am, in the State Board Room, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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. The public hearing will be audio recorded. Pursuant to KRS 13A.270, a transcript of the public hearing will not be made unless a written request for a transcript is made and payment for the transcript is made by the requestor. 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 July 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended regulation sets forth the hearing procedures for school districts to follow if a parent or eligible student challenges an education record on the grounds that it is inaccurate, misleading, or otherwise in violation of privacy or other rights of the student.

(b) The necessity of this administrative regulation: The Family Educational Rights and Privacy Act (FERPA) and KRS 160.730 mandate educational agencies and institutions have hearing procedures if a parent or eligible student wishes to challenge the student's education record.

(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation conforms to FERPA and KRS 160.730 by providing the procedural guide for a hearing to challenge a student's education record.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists the school districts in implementing FERPA and KRS 160.730 by providing hearing procedures compliant with both laws.

(2) If 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 of this regulation includes clarification of the who will conduct the hearing; who will appoint the person who to conduct the hearing; citing the federal statute that mandates a hearing will be available to a parent or eligible student; and editing the regulation so all the language is consistent with FERPA and KRS 160.730.

(b) The necessity of the amendment to this administrative regulation: The regulation required clarification because it created confusion regarding who will conduct the hearing. Further amendments were to comply with the drafting requirements of KRS Ch. 13A.

(c) How this amendment conforms to the content of the authorizing statutes: The amendment of the regulation conforms to FERPA and KRS 160.730 by providing the procedural guide for a hearing to challenge a student's education record.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists the school districts in implementing FERPA and KRS 160.730 by providing hearing procedures compliant with both laws.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this regulation include: Local educational agencies, the Kentucky Board of Education, and the Kentucky Department of Education.

(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: Local educational agencies will conduct hearings when requested by a parent or eligible student to challenge an education record on the grounds that it is inaccurate, misleading, or otherwise in violation of privacy or other rights of the student. If a local educational agency has its own education record hearing policy and procedure then they will submit it to KDE for review and approval as to the compliance with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated additional budget impact related to this administrative regulation for local education agencies, KBE, or KDE. School districts are required to conduct these hearings pursuant to FERPA and KRS 160.730. Therefore, costs related to those hearings are a product of statute, not this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Amending this regulation will benefit local educational agencies by providing clarity on the procedure for conducting a hearing.

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

(a) Initially: This regulation has existed since 1995. Initial costs, if any, occurred nearly 30 years ago. No additional start up costs are anticipated as a result of this amendment.

(b) On a continuing basis: The local educational agencies will incur costs related to conducting a hearing in the event one is requested. These hearings are required pursuant to statute. There are no additional anticipated costs related to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Local school districts will utilize general funds for costs associated with conducting a hearing requested pursuant to the administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all local education agencies.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and the Kentucky Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.730 and 20 U.S.C. 1232g(a)(2)

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

(a) How much 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? This regulation has existed since 1995. Therefore, there are no additional anticipated costs related to amendment of this administrative regulation. Local school districts will have costs related to conducting hearings when requested by a parent or eligible student.

(d) How much will it cost to administer this program for subsequent years? This regulation has existed since 1995. Local school districts will have costs related to conducting hearings when requested by a parent or eligible student.

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

Revenues (+/-): None.

Expenditures (+/-): No change as a result of amendment. See response to 3(d).

Other Explanation: None.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Regulated entities are public schools and districts. See response to 3(a).

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Regulated entities are public schools and districts. See response to 3(b).

(c) How much will it cost the regulated entities for the first year? Regulated entities are public schools and districts. See response to 3(c).

(d) How much will it cost the regulated entities for subsequent years? Regulated entities are public schools and districts. See response to 3(d).

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

Cost Savings (+/-): None anticipated.

Expenditures (+/-): No change as a result of amendment. See response to 3(d).

Other Explanation: None.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No major economic impact as defined by KRS Chapter 13A is anticipated. Both KRS 160.730 and 20 U.S.C. 1232g(a)(2) require hearings in certain circumstances when student educational records are challenged. Amendment to this administrative regulation does not alter that requirement. Instead, the regulation amendment clarifies terms and requirements that apply to such hearings when they occur. No increased cost of hearing is anticipated as a result of this amendment.

**LABOR CABINET
Office of Unemployment Insurance
(Amendment)**

787 KAR 1:360. Overpayment waivers.

RELATES TO: KRS 341.413, 2022 R.S. HB 1[~~2021 Ky. Acts ch. 16, sec.2~~]

STATUTORY AUTHORITY: KRS 341.115(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341. For unemployment insurance claims filed between January 27, 2020 and December 31, 2020, KRS

341.413[~~2021 Ky. Acts ch. 16, sec.2~~] authorizes the secretary to waive overpayments of unemployment insurance benefits if the secretary, upon an alleged overpayment recipient's waiver request, finds the overpayment was made without fault on the part of the recipient and [if]recovery [of]would be contrary to equity and good conscience. Notwithstanding KRS 341.413, 2022 R.S. HB 1 authorizes the secretary to waive an overpayment of benefits for unemployment insurance claims filed between January 27, 2020 and September 6, 2021. This administrative regulation establishes definitions and procedures for waiving overpayments pursuant to KRS Chapter 341, KRS 341.413, and 2022 R.S. HB 1[~~and Ky. Acts ch. 16, sec.2~~].

Section 1. Definitions.

(1) "Benefits" means benefits as defined by KRS 341.020(4).

(2) "Financial hardship" means:

(a) An individual or that individual's immediate family has experienced at least a fifty (50) percent reduction in gross earned income or loss of employment; or

(b) That, as a result of the recovery of the overpayment of the benefit, the individual is unable to meet daily living expenses, including expenses for food, clothing, rent, utilities, insurance, job or job search-related transportation expenses, and medical expenses.

(3) "Office" means the Office of Unemployment Insurance within the Kentucky Labor Cabinet.

(4) "Office error" means:

(a) Errors in computing the benefit rate;

(b) Incorrect weekly payment due to a failure to consider a deductible amount that was properly reported by a claimant;

(c) Payment beyond the expiration of the benefit year;

(d) Payment in excess of the maximum benefit amount;

(e) Payment under an incorrect program;

(f) Retroactive notice of nonmonetary determinations, except that a determination that the claimant has committed fraud is not considered "office error";

(g) Monetary redeterminations;

(h) Payment during a period of disqualification;

(i) Payment to a wrong claimant; or

(j) Erroneous payments resulting from human error in the data entry process.

(5) "Secretary" means the Secretary of the Kentucky Labor Cabinet.

Section 2. Waiver Request. An individual shall make a written request for waiver of a determined overpayment within thirty (30) days of the date of the notification that the individual has been overpaid unemployment insurance benefits.

Section 3. Waivers. Upon receipt of an alleged overpayment recipient's request for an overpayment waiver, the secretary shall issue a waiver of the alleged overpayment if the secretary determines that:

(1) The overpayment was made pursuant to Section 4 of this administrative regulation without fault on the part of the recipient; and

(2) Recovery would be contrary to equity and good conscience as established in Section 5 of this administrative regulation.

Section 4. No-fault Determination. For purposes of Section 3(1) of this administrative regulation, the secretary shall make a determination that the alleged overpayment was made without fault on the part of the recipient if the overpayment of benefits resulted from:

(1) "Office error" as defined by Section 1 of this administrative regulation; or

(2) Auto-payment of benefits.

Section 5. Equity and Good Conscience Determination. For purposes of Section 3(2) of this administrative regulation, the secretary shall make a finding that a recovery of an alleged overpayment is contrary to equity and good conscience if an individual demonstrates that:

(1) Recovery would cause financial hardship to the person from whom it is sought;

(2) The alleged overpayment recipient can show, regardless of the [the] individual's financial circumstances, that due to the notice that the payment would be made or because of the incorrect payment, the individual has relinquished a valuable right or changed positions for the worse. This may be shown if the recipient has made substantial necessary purchases related to daily living expenses, expended substantial necessary funds on daily living expenses, or failed to seek other benefits in reliance upon the receipt of benefits; or

(3) Recovery could be unconscionable, unjust, or unfair under the circumstances.

BUDDY HOSKINSON, Executive Director

APPROVED BY AGENCY: April 26, 2022

FILED WITH LRC: April 28, 2022 at 10:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amended administrative regulation shall be held on July 27, 2022, at 1:00 p.m. Eastern Time at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. 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 July 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: Oran McFarlan, Staff Attorney, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone 502-564-1490, email oran.mcfarlan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Oran McFarlan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedures for waiving overpayments of unemployment insurance claims.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out KRS 341.413 and 2022 R.S. HB 1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions and procedures for waiving overpayments of unemployment insurance claims pursuant to KRS Chapter 341, KRS 341.413, and 2022 R.S. HB 1.

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

(a) How the amendment will change this existing administrative regulation: In compliance with 2022 R.S. HB 1, the amendment expands the timeframe in which the secretary is authorized to waive an overpayment of benefits for unemployment insurance claims from January 27, 2020 – December 31, 2020 to January 27, 2020 – September 6, 2021.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to conform to the expanded claim filing timeframe stated in 2022 R.S. HB 1 (i.e., January 27, 2020 – September 6, 2021).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides the procedures for waiving overpayments of unemployment insurance claims filed

between January 27, 2020 and September 6, 2021.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the secretary and Office of Unemployment Insurance staff with the necessary definitions and procedures for waiving overpayments of unemployment insurance claims filed between January 27, 2020 and September 6, 2021

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects unemployment insurance benefit recipients in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows the Labor Cabinet Secretary to waive overpayments of unemployment insurance benefits.

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

(a) Initially: \$194,560.

(b) On a continuing basis: \$93,600.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current federal funding will be used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All unemployment insurance benefit overpayment recipients are treated equally.

FISCAL NOTE

(1) What 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 Office of Unemployment Insurance within the Kentucky Labor Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 341.413 and 2022 R.S. HB 1.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No 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? \$194,560.

(d) How much will it cost to administer this program for subsequent years? \$93,600.

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

Revenues (+/-): None.

Expenditures (+/-): See above.

Other Explanation: This amendment does not impose any additional expenditures to employers.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and eligible claimants that request waiver of an alleged overpayment of unemployment insurance benefits may have the alleged overpayment amount waived by the Office of Unemployment Insurance pursuant to the criteria and procedures contained in 787 KAR 1:360. This amendment does not impose any additional expenditures to employers.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and eligible claimants that request waiver of an alleged overpayment of unemployment insurance benefits may have the alleged overpayment amount waived by the Office of Unemployment Insurance pursuant to the criteria and procedures contained in 787 KAR 1:360. This amendment does not impose any additional expenditures to employers.

(c) How much will it cost the regulated entities for the first year? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

(d) How much will it cost the regulated entities for subsequent years? There is no additional cost to the unemployment insurance benefit recipients to comply with this administrative regulation, and this amendment does not impose any additional expenditures to employers.

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

Cost Savings (+/-): See above.

Expenditures (+/-): No increase.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] It is not anticipated that this amendment will have an overall negative or adverse economic impact of \$500,000 or more on the Office of Unemployment Insurance.

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

810 KAR 8:010. Medication; testing procedures; prohibited practices.

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(8), 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.260(8), and 230.320 authorize 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 requirements and controls in the administration of drugs, medications, and substances to horses, governs certain prohibited practices, and establishes trainer responsibilities relating to the health and fitness of horses.

Section 1. Definitions.

(1) "AAS" or "anabolic steroid" means an anabolic androgenic steroid.

(2) "Administer" means to apply to or cause the introduction of a substance into the body of a horse.

(3) "Commission laboratory" means a laboratory chosen by the commission to test biologic specimens from horses taken under the supervision of the commission veterinarian.

(4) "Location under the jurisdiction of the commission" means a licensed race track or a training center as described in KRS 230.260(5).

(5) "Positive finding" means the commission laboratory has conducted testing and determined that a drug, medication, or substance, the use of which is restricted or prohibited by this administrative regulation, 810 KAR 8:020, 810 KAR 8:025, or 810 KAR 8:040, was present in the sample.

(a) For the drugs, medications, or substances listed in this administrative regulation, 810 KAR 8:020, or 810 KAR 8:025, for which an established concentration level is provided, it shall be necessary to have a finding in excess of the established concentration level as provided for the finding to be considered a positive finding.

(b) Positive finding also includes:

1. Substances present in the horse in excess of concentrations at which the substances could occur naturally; and

2. Substances foreign to a horse that cause interference with testing procedures.

(6) "Primary sample" means the primary sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the commission laboratory.

(7) "Split sample" means the split sample portion of the biologic specimen taken under the supervision of the commission veterinarian to be tested by the split sample laboratory.

(8) "Split sample laboratory" means the laboratory approved by the commission to test the split sample portion of the biologic specimen from horses taken under the supervision of the commission veterinarian.

(9) "Test barn" means a fenced enclosure sufficient in size and facilities to accommodate the stabling of horses temporarily detained for obtaining biologic specimens for testing.

Section 2. Use of Medication.

(1) Therapeutic measures and medication necessary to improve or protect the health of a horse shall be administered to a horse in training under the direction of a licensed veterinarian.

(2) Except as expressly permitted in 810 KAR Chapter 8, while participating in a race (betting or non-betting), qualifying race, or time trial, it shall be a violation for a horse to carry in its body any drug, medication, substance, or metabolic derivative, that:

(a) Is foreign to the horse; or

(b) Might mask the presence of a prohibited drug, or obstruct testing procedures.

(3) It shall be a violation for therapeutic medications to be present in excess of established threshold concentrations established in this administrative regulation, 810 KAR 8:020, or in 810 KAR 8:025. The thresholds for permitted NSAIDs are established in Section 8 of this administrative regulation.

(4) Except as provided by paragraphs (a), (b), and (c) of this subsection, it shall be a violation for a substance to be present in a horse in excess of a concentration at which the substance could occur naturally. It shall be the responsibility of the commission to

prove that the substance was in excess of normal concentration levels.

(a) Gamma amino butyric acid shall not be present in a concentration greater than 110 nanograms per milliliter in serum or plasma.

(b) Cobalt shall not be present in a concentration greater than twenty-five (25) parts per billion in serum or plasma.

(c) Free prednisolone shall not be present in a concentration greater than ten (10) nanograms per milliliter in urine.

(5) It shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or non-betting), qualifying race, or time trial, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) A biologic specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race (betting or non-betting), qualifying race, or time trial; and

(b) The commission laboratory presents to the commission a report of a positive finding.

(6) The commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 8:020, for classification of drugs, medications, and substances violating this administrative regulation. Penalties for violations of this administrative regulation shall be implemented in accordance with 810 KAR 8:030.

Section 3. Treatment Restrictions.

(1) Except as provided in Section 4 of this administrative regulation, only a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall administer by injection a prescription or controlled drug, medication, or other substance to a horse at a location under the jurisdiction of the commission.

(2) The only injectable substance allowed within twenty-four (24) hours prior to post time of the race in which the horse is entered shall be furosemide, as established in Section 6 of this administrative regulation.

(3) Except as provided by subsection (5) of this section, only a veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission may possess a hypodermic needle, syringe, or injectable of any kind at a location under the jurisdiction of the commission.

(4) A veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission shall use only single-use disposable needles and syringes, and shall dispose of them in a container approved by the commission veterinarian.

(5) If a person regulated by the commission has a medical condition that makes it necessary to possess a needle and syringe at a location under the jurisdiction of the commission, the person shall request prior permission from the stewards or judges and furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe. The stewards or judges may grant approval for a person to possess and use a needle and syringe at a location under the jurisdiction of the commission, but may also establish necessary restrictions and limitations.

(6) A commission employee may accompany a veterinarian at a location under the jurisdiction of the commission and take possession of a syringe, needle, or other device used to administer a substance to a horse.

(7) Electronic therapeutic treatments, other than nebulization, shall not be administered to a horse within twenty-four (24) hours prior to post time of a race in which the horse is entered.

Section 4. Certain Permitted Substances. Liniments, antiseptics, antibiotics, ointments, leg paints, washes, and other products commonly used in the daily care of horses may be administered by a person, other than a licensed veterinarian if:

(1) The treatment does not include any drug, medication, or substance otherwise prohibited by this administrative regulation;

(2) The treatment is not injected; and

(3) The person is acting under the direction of a licensed trainer or veterinarian licensed to practice veterinary medicine in Kentucky and licensed by the commission.

Section 5. Anti-ulcer Medications. The following anti-ulcer medications may be administered orally, at the dosage stated in this section, up to twenty-four (24) hours prior to post time of the race in which the horse is entered:

(1) Cimetidine (Tagamet): eight (8) to twenty (20) milligrams per kilogram;

(2) Omeprazole (Gastrogard): two and two-tenths (2.2) grams;

(3) Ranitidine (Zantac): eight (8) milligrams per kilogram; and

(4) Sucralfate: two (2) to four (4) grams.

Section 6. Furosemide Use on Race Day.

(1) Furosemide may be administered, in accordance with this section, to a horse that is entered to compete in a race, qualifying race, or time trial, except as provided in subsection (6) of this section.

(2) Furosemide shall only be administered prior to a race, qualifying race, or time trial by:

(a) The commission veterinarian; or

(b) A licensed veterinarian approved by the commission to perform the administration if the commission veterinarian is unavailable. If the furosemide is administered by an approved licensed veterinarian, the administering veterinarian shall provide a written report to the commission veterinarian no later than two (2) hours prior to post time of the race in which the horse receiving the furosemide is competing.

(3) Except as provided in subsection (6) of this section, furosemide may be used if administered:

(a) At a location under the jurisdiction of the commission where the horse is scheduled to race;

(b) By a single intravenous injection, not less than four (4) hours prior to post time for the race, qualifying race, or time trial in which the horse is entered; and

(c) In a dosage not less than 150 milligrams and not more than 500 milligrams.

(4) The specific gravity of a post-race urine sample shall not be below one and one one-hundredths (1.010). If the specific gravity of the post-race urine sample is determined to be below one and one one-hundredths (1.010), a quantification of furosemide in serum or plasma shall be performed by the commission laboratory. If a horse fails to produce a urine specimen, the commission laboratory shall perform a quantification of furosemide in the serum or plasma sample. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of this section.

(5) The initial cost of administering the furosemide shall be twenty (20) dollars per administration. The commission shall monitor the costs associated with administering furosemide and consult with industry representatives to determine if the cost should be lowered based on prevailing veterinarian services and supplies. The commission shall maintain records documenting the basis for its determination, and if the cost is determined to be less than twenty (20) dollars per administration, then the commission shall lower the cost accordingly. The cost shall be prominently posted in the racing office.

(6)(a) A two (2) year old or stakes horse shall not be administered any drug, medication or other substance, including furosemide, within twenty-four (24) hours of the post time of the race in which the horse is entered. Participation by the horse shall not affect the status of the participating horse on the official authorized bleeder medication list.

(b) The implementation and enforcement of the prohibition in paragraph (a) of this subsection shall begin on:

1. January 1, 2020 for all two (2) year olds; and

2. January 1, 2021 for all horses entered to run in a stakes race; including the races comprising the Breeders' Cup World Championships and the races designated as graded stakes by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association.

(c) A concentration of furosemide greater than one and zero-tenths (1.0) nanograms per milliliter in serum in a post-race sample

shall constitute a violation of this administrative regulation.

Section 7. Furosemide Eligibility.

(1)(a) Except as provided in Section 6(6) of this administrative regulation, a horse shall be eligible to race with furosemide if the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interests to race with furosemide. Notice that a horse eligible to receive furosemide will race with or without furosemide shall be made at the time of entry to ensure public notification, including publication in the official racing program.

(b) It shall constitute a violation of this administrative regulation if notice is made pursuant to this section that a horse will race with furosemide, and the post-race urine, serum, or plasma does not show a detectable concentration of furosemide in the post-race urine, serum, or plasma.

(2) After a horse has been determined to no longer be required to receive furosemide, the horse shall not be eligible to receive furosemide unless the licensed trainer or a licensed veterinarian determines that it would be in the horse's best interest to race with furosemide and the licensed trainer or a licensed veterinarian complies with the requirements of this section.

Section 8. Permitted Non-steroidal Anti-inflammatory Drugs (NSAIDs).

(1) NSAIDs shall not be administered within forty-eight (48) hours prior to post time for the race in which the horse is entered. The detection in a post-race sample of blood of a detectable concentration of an NSAID, except as allowed by subsection (2) of this section, shall constitute a violation of this administrative regulation. The detection in a post-race sample of blood of more than one (1) of phenylbutazone, flunixin, and ketoprofen in excess of the concentrations permitted by subsection (2) of this section shall constitute a violation of this administrative regulation.

(2)(a) A finding of phenylbutazone below a concentration of three-tenths (0.3) microgram per milliliter of serum or plasma shall not constitute a violation of this section.

(b) A finding of flunixin below a concentration of five (5) nanograms per milliliter of serum or plasma shall not constitute a violation of this section.

(c) A finding of ketoprofen below a concentration of two (2) nanograms per milliliter of serum or plasma shall not constitute a violation of this section.

Section 9. Anabolic Steroids.

(1) An exogenous AAS shall not be present in a horse that is racing. The detection of an exogenous AAS or metabolic derivative in a post-race sample shall constitute a violation of this administrative regulation.

(2) The detection in a post-race sample of an endogenous AAS or metabolic derivative where the concentration of the AAS or metabolic derivative exceeds naturally occurring physiological levels shall constitute a violation of this administrative regulation. The following shall be deemed to be naturally occurring physiological levels:

(a) Boldenone:

1. In male horses other than geldings, free and conjugated boldenone fifteen (15) nanograms per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma; and

2. In geldings and female horses, free and conjugated boldenone one (1) nanogram per milliliter in urine or free boldenone twenty-five (25) picograms per milliliter in serum or plasma.

(b) Nandrolone:

1. In geldings, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone twenty-five (25) picograms per milliliter in serum or plasma;

2. In fillies and mares, free and conjugated nandrolone one (1) nanogram per milliliter in urine or free nandrolone twenty-five (25) picograms per milliliter in serum or plasma; and

3. In male horses other than geldings, forty-five (45) nanograms per milliliter of metabolite, 5 α -estrane-313, 17 α -diol in urine or a ratio in urine of 5 α -estrane-313, 17 α -diol to 5 α -estrene-

313, 17 α -diol of >1:1.

(c) Testosterone:

1. In geldings, free and conjugated testosterone twenty (20) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma; and

2. In fillies and mares (unless in foal), free and conjugated testosterone fifty-five (55) nanograms per milliliter in urine or free testosterone one hundred (100) picograms per milliliter in serum or plasma.

(3) The gender of the horse from which a post-race biologic specimen is collected shall be identified to the commission veterinarian and the testing laboratory.

Section 10. Clenbuterol.

(1) Clenbuterol use shall be prohibited in racing and training unless the conditions established by this subsection are met.

(a) The prescription for clenbuterol shall be made for a specific horse based upon a specific diagnosis.

(b) The veterinarian shall provide a copy of the treatment sheet to the Equine Medical Director or his or her designee for review within twenty-four (24) hours of any administration of clenbuterol.

(c) A horse administered clenbuterol shall be placed on the veterinarian's list for a minimum of twenty-one (21) days after the date of last administration. The horse shall meet all conditions for removal from the list, including blood and urine sampling taken after the twenty-one (21) day period. Both samples shall have no detectable clenbuterol.

(2) A horse shall not be eligible to race until it has completed all the requirements in subsection (1)(c) of this section.

(3) If clenbuterol is detected in a horse's post-race or out of competition sample and appropriate notification as established in subsection (1)(b) of this section was not completed, the horse shall immediately be placed on the veterinarian's list pending the outcome of an investigation. The horse shall be required to meet all conditions for removal from the veterinarian's list as established in subsection (1)(c) of this section.

Section 11. Test Barn.

(1) A licensed association shall provide and maintain a test barn on association grounds.

(2) The test barn shall be a fenced enclosure sufficient:

(a) In size and facilities to accommodate the stabling of horses temporarily detained for the taking of biologic specimens; and

(b) In structural design to prevent entry by unauthorized persons.

(3) The test barn shall be under the supervision and control of the Chief Racing Veterinarian or his or her designee, and no access to individuals other than commission personnel shall be permitted unless with the permission of the Chief Racing Veterinarian or his or her designee. If association personnel require immediate access to the test barn due to fire or other emergency, the association shall report the access to commission officials as soon as possible after the emergency.

Section 12. Sample Collection, Testing and Reporting.

(1) Sample collection shall be done in accordance with the procedures provided in this administrative regulation, 810 KAR 8:060, and under the instructions provided by the commission veterinarian.

(2) The commission veterinarian, in consultation with the commission laboratory shall determine a minimum sample requirement which shall be uniform for each horse and which shall be separated into primary and split samples.

~~[(3) An owner or trainer may request that a split sample be tested by a split sample laboratory approved by the commission.]~~

~~(4) The cost of testing under subsection (3) of this section, including shipping, shall be borne by the owner or trainer requesting the test.]~~

~~(3)[(5)](a) Stable equipment other than that necessary for washing and cooling out a horse shall not be permitted in the test barn.~~

~~(b) Buckets and water shall be furnished by the commission veterinarian.~~

(c) If a body brace is to be used on a horse, it shall:

1. Be supplied by the trainer; and
2. Applied only with the permission and in the presence of the commission veterinarian or his designee.

(d) A licensed veterinarian may attend to a horse in the test barn only with the permission of and in the presence of the commission veterinarian or his designee.

~~(4)~~⁽⁵⁾ Within five (5) business days of receipt of notification by the commission laboratory of a positive finding, the stewards and judges shall notify the owner and trainer orally or in writing of the positive finding.

~~(5)~~⁽⁷⁾ The stewards or judges shall conduct a hearing pursuant to 810 KAR 9:010~~[as soon as possible]~~ after the conclusion of an investigation of a positive finding. A person charged with a violation may request a continuance, which the stewards or the judges may grant as set forth in 810 KAR 9:010~~[for good cause shown]~~.

Section 13. Storage and Shipment of Split Samples.

(1) Split samples shall be secured and made available for further testing in accordance with the procedures established in this subsection.

(a) Split samples shall be secured in the test barn in the same manner as the primary samples for shipment to the commission laboratory, as established in Section 12 of this administrative regulation, until the primary samples are packed and secured for shipment to the commission laboratory. Split samples shall then be transferred to a freezer or refrigerator at a secure location approved and chosen by the commission.

(b) A freezer or refrigerator for storage of split samples shall be equipped with a lock. The lock shall be secured to prevent access to the freezer or refrigerator at all times except as specifically provided by paragraph (c) of this subsection.

(c) A freezer or refrigerator for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the commission veterinarian that shall be used each time a split sample freezer or refrigerator is opened to specify each person in attendance, the purpose for opening the freezer or refrigerator, identification of split samples deposited or removed, the date and time the freezer or refrigerator was opened, the time the freezer or refrigerator was closed, and verification that the lock was secured prior to and after opening of the freezer or refrigerator. A commission veterinarian or his designee shall be present when the freezer or refrigerator is opened.

(e) Evidence of a malfunction of a split sample freezer or refrigerator shall be documented in the log.

(f) The commission shall be considered the owner of a split sample.

(2)(a) A trainer or owner of a horse receiving notice of a positive finding may request that a split sample corresponding to the portion of the sample tested by the commission laboratory be sent to the split sample laboratory. The party requesting the split sample shall select a laboratory solicited and approved by the commission to perform the analysis.

(b) The request shall be made in writing and delivered to the stewards or judges within three (3) business days after the trainer or owner of the horse receives oral or written notice of the positive finding by the commission laboratory.

(c) The party requesting the split sample shall select a laboratory solicited and approved by the commission to perform the analysis within five (5) days after he or she is notified of the split sample laboratories available to test the split sample. If a trainer or owner does not select a laboratory within five (5) days after notification of the available split laboratories, then he or she shall be deemed to have waived the right to split sample analysis.

(d) A split sample so requested shall be shipped within seven (7) days of the date that the trainer or owner provides his or her laboratory selection to the stewards~~[as expeditiously as possible]~~.

(3)(a) The owner or trainer requesting testing of a split sample shall be responsible for the cost of the testing, including the cost of shipping.

(b) Failure of the owner, trainer, or a designee to appear at the time and place designated by the commission veterinarian in connection with securing, maintaining, or shipping the split sample shall constitute a waiver of any right to be present during the packaging and shipping of the split sample~~[split sample testing procedures]~~.

(c) Prior to shipment of the split sample, the commission shall confirm:

1. That the split sample laboratory has agreed to provide the testing requested;

2. That the split sample laboratory has agreed to send results to the commission; and

3. That arrangements for payment satisfactory to the split sample laboratory have been made.

Section 14. Split Sample Chain of Custody.

(1) Prior to opening the split sample freezer or refrigerator, the commission shall provide a split sample chain of custody verification form. The form to be used shall be the Split Sample Chain of Custody Form. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample and shall contain the following information:

(a) The date and time the sample is removed from the split sample freezer or refrigerator;

(b) The sample number; and

(c) The address where the split sample is to be sent.

(2) A split sample shall be removed from the split sample freezer or refrigerator by a commission employee after notice to the owner, trainer, or designee thereof and a commission-designated representative shall pack the split sample for shipment in accordance with the packaging procedures directed by the commission. The Split Sample Chain of Custody Form shall be signed by both the owner's representative, if present, and the commission representative to confirm the proper packaging of the split sample for shipment. The exterior of the package shall be secured and sealed to prevent tampering with the package.

(3) The owner, trainer, or designee, if present, may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(4) The Split Sample Chain of Custody Form shall be completed and signed by the representative of the commission and the owner, trainer, or designee, if present.

(5) The commission representative shall retain the original Split Sample Chain of Custody Form and provide a copy to the owner, trainer, or designee, if requested.

Section 15. Medical Labeling.

(1) A drug or medication that, by federal or state law, requires a prescription shall not be used or kept on association grounds unless validly prescribed by a duly licensed veterinarian.

(2) A drug or medication shall bear a prescription label that is securely attached and clearly ascribed to show the following:

(a) The name of the product;

(b) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;

(c) The name of the horse for which the product is intended or prescribed;

(d) The dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and

(e) The name of the trainer to whom the product was dispensed.

Section 16. Trainer Responsibility.

(1) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the condition of a horse in his or her care.

(2) In the absence of substantial evidence to the contrary, a trainer shall be responsible for the presence of a prohibited drug, medication, substance, or metabolic derivative, including permitted medication in excess of the maximum allowable concentration, in a horse in his or her care.

(3) A trainer shall prevent the administration of a drug,

medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

(4) A trainer whose horse has been claimed shall remain responsible for a violation of this administrative regulation regarding that horse's participation in the race in which the horse is claimed.

(5) A trainer shall be responsible for:

(a) Maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition, and safety of horses in his or her care;

(d) Promptly reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and the commission veterinarian if a posterior digital neurectomy (heel nerve) is performed on a horse in his or her care and ensuring this fact is designated on its certificate of registration;

(f) Promptly reporting to the racing secretary the name of a mare in his or her care that has been bred and is entered to race;

(g) Promptly notifying the commission veterinarian of a reportable disease or communicable illness in a horse in his or her care;

(h) Promptly reporting the serious injury or death of a horse in his or her care at a location under the jurisdiction of the commission to the stewards or judges and the commission veterinarian and ensuring compliance with Section 23 of this administrative regulation and 810 KAR 4:010, Section 14, governing postmortem examinations;

(i) Complying with the medication and recordkeeping requirements in subsection (6) of this section;

(j) Promptly notifying the stewards or judges and the commission veterinarian if the trainer has knowledge or reason to believe that there has been an administration to a horse of a drug, medication, or other substance prohibited by this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as established in Section 21 of this administrative regulation;

(k) Ensuring the fitness of every horse in his or her care to perform creditably at the distance entered;

(l) Ensuring that every horse he or she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed by 810 KAR 2:010, Section 4(1)(l);

(m) Ensuring proper bandages, equipment, and shoes;

(n) Ensuring the horse's presence in the paddock at the time prescribed by racing officials before the race in which the horse is entered;

(o) Personally attending in the paddock and supervising the saddling or preparation of a horse in his or her care, unless an assistant trainer fulfills these duties or the trainer is excused by the judges or stewards pursuant to 810 KAR 4:100, Section 3(2)(f); and

(p) Attending the collection of a biologic specimen taken from a horse in his or her care or delegating a licensed employee or the owner to do so.

(6)(a) A trainer shall maintain a clear and accurate record of any treatment administered to a horse in his or her care.

(b) A trainer shall ensure the transfer of copies of all medical records to the subsequent owner and trainer of a horse.

(c) Failure to comply with this subsection may result in the imposition of penalties pursuant to 810 KAR 8:030.

(d) The stewards and judges may at any time require presentation of a horse's medical records.

Section 17. Licensed Veterinarians.

(1) A veterinarian licensed by the commission and practicing at a location under the jurisdiction of the commission shall be considered under the supervision of the commission veterinarian and the stewards or judges.

(2) A veterinarian shall report to the stewards, judges or the commission veterinarian a violation of this administrative regulation by a licensee.

Section 18. Veterinary Reports.

(1) A veterinarian who treats a horse at a location under the jurisdiction of the commission shall submit a Veterinary Report of Horses Treated to be Submitted Daily form to the commission veterinarian containing the following information:

(a) The name of the horse treated;

(b) The type and dosage of drug or medication administered or prescribed;

(c) The name of the trainer of the horse;

(d) The date and time of treatment; and

(e) Other pertinent treatment information requested by the commission veterinarian.

(2) The Veterinary Report of Horses Treated to be Submitted Daily form shall be signed by the treating practicing veterinarian.

(3) The Veterinary Report of Horses Treated to be Submitted Daily form shall be on file not later than the time prescribed on the next race day by the commission veterinarian.

(4) The Veterinary Report of Horses Treated to be Submitted Daily form shall be confidential, and its content shall not be disclosed except in the course of an investigation of a possible violation of this administrative regulation or in a proceeding before the stewards, judges or the commission, or to the trainer or owner of record at the time of treatment.

(5) A timely and accurate filing of a Veterinary Report of Horses Treated to be Submitted Daily form by the veterinarian or his designee that is consistent with the analytical results of a positive test reported by the commission laboratory may be used as a mitigating factor in determining the appropriate penalties pursuant to 810 KAR 8:030.

(6) A veterinarian having knowledge or reason to believe that a horse entered in a race has received a drug, medication, or substance prohibited under this administrative regulation or has knowledge or reason to believe that a prohibited practice has occurred as established in Section 21 of this administrative regulation shall report this fact immediately to the commission veterinarian or to the stewards or judges.

(7) A practicing veterinarian shall maintain records of all horses treated and of all medications sold or dispensed. The records shall include:

(a) The name of the horse;

(b) The trainer of the horse;

(c) The date, time, amount, and type of medication administered;

(d) The drug or compound administered;

(e) The method of administration; and

(f) The diagnosis.

(8) The records shall be retained for at least sixty (60) days after the horse has raced and shall be available for inspection by the commission.

Section 19. Veterinarian's List.

(1) The commission veterinarian shall maintain a list of horses determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity, or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the commission veterinarian, the horse is capable of competing in a race.

(3) The commission shall maintain a bleeder list of all horses that have demonstrated external evidence of exercise-induced pulmonary hemorrhage during or after a race or workout as observed by the commission veterinarian.

(4) Every horse that is a confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to participate in a race (betting or non-betting), qualifying race, time trial, or for the following time periods:

(a) First incident - fourteen (14) days;

(b) Second incident within a 365-day period - thirty (30) days;

(c) Third incident within a 365-day period - 180 days; and

(d) Fourth incident within a 365-day period - barred from racing for life.

(5) For the purpose of counting the number of days a horse is ineligible to run, the day after the horse bled externally shall be the

first day of the recovery period.

(6) The voluntary administration of furosemide without an external bleeding incident shall not subject a horse to the initial period of ineligibility as established in this section.

Section 20. Distribution of Purses, Barn Searches, and Retention of Samples.

(1) For all races, purse money in thoroughbred and other flat racing shall be paid or distributed pursuant to the process provided in 810 KAR 2:070, Section 27(3), and in standardbred racing, no later than twenty-four (24) hours after notice from the commission that a final laboratory report has been issued.

(2) The distribution of purse money prior to the issuance of a final laboratory report shall not be considered a finding that no prohibited drug, medication, substance, or metabolic derivative has been administered to a horse.

(3) After the commission laboratory issues a positive finding the executive director of the commission or the stewards or judges may authorize and execute an investigation into the circumstances surrounding the incident that is the subject of the positive finding.

(4) If the purse money has been distributed, the stewards or judges shall order the money returned immediately to the association upon notification from the commission laboratory that a prohibited drug, medication, substance, or metabolic derivative was administered to a horse eligible for purse money.

(5) At the conclusion of testing by the commission laboratory and split sample laboratory, the remaining portion of the samples at the commission laboratory and split samples remaining at the test barn may be retained at a proper temperature at a secure facility approved and chosen by the commission. If a report indicating a positive finding has been issued, the commission shall use its best reasonable efforts to retain any remaining portion of the sample until legal proceedings have concluded. The commission may freeze samples.

Section 21. Other Prohibited Practices Constituting a Violation of this Administrative Regulation.

(1) A drug, medication, substance, or device shall not be possessed or used by a licensee, or his designee or agent, within a nonpublic area at a location under the jurisdiction of the commission:

(a) The use of which may endanger the health and welfare of the horse; or

(b) The use of which may endanger the safety of the rider or driver.

(2) Without the prior permission of the commission or its designee, a drug, medication, or substance that has never been approved by the United States Food and Drug Administration (USFDA) for use in humans or animals shall not be possessed or used at a location under the jurisdiction of the commission. The commission shall determine whether to grant prior permission after consultation with the Equine Drug Research Council.

(3) The following blood-doping agents shall not be possessed or used at a location under the jurisdiction of the commission:

(a) Erythropoietin;

(b) Darbepoietin;

(c) Oxyglobin;

(d) Hemopure; or

(e) Any substance that abnormally enhances the oxygenation of body tissue.

(4) A treatment, procedure, or therapy shall not be practiced, administered, or applied that may:

(a) Endanger the health or welfare of a horse; or

(b) Endanger the safety of a rider or driver.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be used unless the conditions established in this subsection are met.

(a) A treated horse shall not race for a minimum of ten (10) days following treatment.

(b) A veterinarian licensed to practice by the commission shall administer the treatment.

(c) The commission veterinarian shall be notified prior to the delivery of the machine on association grounds.

(d) Prior to administering the treatment, a report shall be submitted by the veterinarian administering the treatment to the commission veterinarian on the Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy.

(6) Other than furosemide, an alkalinizing substance that could alter the serum or plasma pH or concentration of bicarbonates or carbon dioxide in a horse shall not be used within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(7) Without the prior permission of the commission veterinarian or his designee, based on standard veterinary practice for recognized conditions, a nasogastric tube which is longer than six (6) inches shall not be used for the administration of any substance within twenty-four (24) hours prior to post time of the race in which the horse is entered.

(8) A serum or plasma total carbon dioxide (TCO₂) level shall not exceed thirty-seven (37.0) millimoles per liter; except, a violation shall not exist if the TCO₂ level is found to be normal for the horse following the quarantine procedure established in Section 22 of this administrative regulation.

(9) A blood gas machine shall not be possessed or used by a person other than an authorized representative of the commission at a location under the jurisdiction of the commission.

(10) A shock wave therapy machine or radial pulse wave therapy machine shall not be possessed or used by anyone other than a veterinarian licensed by the commission at a location under the jurisdiction of the commission.

Section 22. TCO₂ Testing and Procedures.

(1)(a) The stewards, judges, or commission veterinarian may order the pre-race or post-race collection of blood specimens from a horse to determine the total carbon dioxide concentration in the serum or plasma of the horse. The winning horse and other horses, as selected by the stewards or judges, may be tested in each race to determine if there has been a violation of this administrative regulation.

(b) Pre-race sampling shall be done at a reasonable time, place, and manner directed by the chief state steward in consultation with the commission veterinarian.

(c) A specimen consisting of at least two (2) blood tubes shall be taken from a horse to determine the TCO₂ concentration in the serum or plasma of the horse. If the commission laboratory determines that the TCO₂ level exceeds thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty, the executive director of the commission shall be informed of the positive finding.

(d) Split sample testing for TCO₂ may be requested by an owner or trainer in advance of the collection of the specimen by the commission veterinarian; however, the collection and testing of a split sample for TCO₂ testing shall be done at a reasonable time, place, and manner directed by the commission veterinarian.

(e) The cost of split sample testing, including the cost of shipping, shall be borne by the owner or the trainer.

(2)(a) If the level of TCO₂ is determined to exceed thirty-seven (37.0) millimoles per liter plus the laboratory's measurement of uncertainty and the licensed owner or trainer of the horse certifies in writing to the stewards or judges within twenty-four (24) hours after the notification of the test result that the level is normal for that horse, the owner or trainer may request that the horse be held in quarantine. If quarantine is requested, the licensed association shall make guarded quarantine available for that horse for a period of time to be determined by the steward or judges, but in no event for more than seventy-two (72) hours.

(b) The expense for maintaining the quarantine shall be borne by the owner or trainer.

(c) During quarantine, the horse shall be retested periodically by the commission veterinarian.

(d) The horse shall not be permitted to race during a quarantine period, but it may be exercised and trained at times prescribed by the licensed association and in a manner that allows monitoring of the horse by a commission representative.

(e) During quarantine, the horse shall be fed only hay, oats, and water.

(f) If the commission veterinarian is satisfied that the horse's level of TCO₂, as registered in the original test, is physiologically normal for that horse, the stewards or judges:

1. Shall permit the horse to race; and
2. May require repetition of the quarantine procedure established in paragraphs (a) through (f) of this subsection to reestablish that the horse's TCO₂ level is physiologically normal.

Section 23. Postmortem Examination.

(1) A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission and at a facility designated by the commission, through its designee, as provided in 810 KAR 4:010, Section 14.

(2) The commission shall bear the cost of an autopsy that is required by the commission.

(3) The presence of a prohibited drug, medication, substance, or metabolic derivative thereof in a specimen collected during the postmortem examination of a horse may constitute a violation of this administrative regulation.

Section 24. Corticosteroids.

(1) A corticosteroid shall not be administered intra-articularly within fourteen (14) days before post time for the race in which the horse is entered.

(2) The presence of a detectable concentration of more than one (1) corticosteroid in a post-race sample of blood, urine, or any combination of blood and urine shall constitute a violation of this section.

Section 25. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Veterinary Report of Horses Treated to be Submitted Daily", KHRC 8-010-1, 11/2018;
- (b) "Split Sample Chain of Custody Form", KHRC 8-010-2, 11/2018; and
- (c) "Veterinary Report of Horses Treated with Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy", KHRC 8-010-3, 11/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the commission's Web site at https://khrc.ky.gov/new_docs.aspx?cat=32.

JONATHAN RABINOWITZ, Chairman

RAY PERRY, Secretary

APPROVED BY AGENCY: May 9, 2022

FILED WITH LRC: May 11, 2022 at 2:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 22, 2022 at 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 July 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, 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 administrative regulation establishes the requirements for pre- and post-race testing at licensed racing associations in the Commonwealth. The regulation sets forth specific prohibitions concerning medications, establishes the primary and split sample collection process and notification requirements, sets forth the trainer responsibility rule, establishes the veterinarians' list, contains provisions concerning veterinarians and medical labeling, and sets forth the procedures concerning search and seizure on racing association grounds.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses participating in a race. This administrative regulation establishes the requirements, prohibitions, and procedures pertaining to the use of medications on and leading up to racing days during horse race meetings 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 racing days 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: The proposed amendment will eliminate redundant provisions and clarify vague provisions. Additionally, the owner or trainer requesting a split sample shall select an approved laboratory to perform the split analysis within 5 days of notification of the available laboratories. Failure to select a laboratory within that deadline shall constitute a waiver of the right to split analysis. The split sample shall be shipped within 7 days of the date that the trainer or owner selects the laboratory.

(b) The necessity of the amendment to this administrative regulation: It is necessary to eliminate redundancy and unclear provisions in order to clarify the regulation. The additional proposed amendments will streamline the split sample process and allow parties to proceed to stewards' hearing more expeditiously.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) allow the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to horses participating in a race. The amendment to this administrative regulation establishes additional requirements, prohibitions, and procedures pertaining to the use of medications on and leading up to racing days during horse race meetings in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This proposed amendment will assist in the effective administration of KRS 230.215(2), 230.260(8), and 230.240(2) by establishing appropriate requirements and prohibitions pertaining to the use of medications in horse racing in Kentucky.

(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 regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In 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 question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require owners and trainers requesting a split sample to select an approved laboratory within 5 days of notification of the available laboratories or waive their right to a split. The owner or trainer may then choose to send a representative within 7 days of that date to witness the split sample shipment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are anticipated to comply with this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any 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

(1) What 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, 230.320, 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 administrative regulation will not generate revenue for state or local governments for the first year.

(b) How much revenue will this administrative regulation

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Costs will not be affected by this amendment.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Costs will not be affected by this amendment.

(c) How much will it cost the regulated entities for the first year? No costs are associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years? No costs are associated with this amendment.

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

Cost Savings (+/-): neutral.

Expenditures (+/-): neutral.

Other Explanation: none.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This amendment will not have a major economic impact, as defined above.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. No federal mandate is associated with this amendment.

(2) State compliance standards. N/A.

(3) Minimum or uniform standards contained in the federal mandate. N/A.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 9:010. Hearings, reviews, and appeals.

RELATES TO: KRS 230.215(2), 230.310(2), 230.320, 230.330
STATUTORY AUTHORITY: KRS 230.215(2), 230.320, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215 vests the Kentucky Horse Racing Commission with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth. KRS 230.320(1) authorizes the commission to promulgate administrative regulations under which

any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse. KRS 230.320(3) requires the commission to grant an appeal and administrative hearing in accordance with KRS Chapter 13B to any person whose license is denied, suspended, or revoked or who is assessed an administrative fine or required to return a purse. KRS 230.320(5) authorizes the commission to determine that certain appeals are frivolous and requires prescription of the factors leading to such a determination. KRS 230.370 authorizes the commission to promulgate any reasonable and necessary administrative regulation for the conduct of hearings before it. This administrative regulation establishes the procedures for administrative hearings and appeals held pursuant to KRS Chapter 230 and establishes parameters for frivolous appeals.

Section 1. Public Disclosures.

(1) The commission or its executive director may publicly disclose information regarding an alleged regulatory violation if such information will not unduly impact any investigation.

(a) After notice to the racing participant, the commission or its executive director may publicly disclose the identity of any racing participant who is accused of an alleged regulatory violation and the identity of the horse at issue;

(b) After both the commission and racing participant receive testing results pursuant to 810 KAR 8:010 and 810 KAR 8:060, the commission or its executive director may publicly disclose the alleged conduct or the alleged amount and type of the medication, drug, or substance that gave rise to the alleged regulatory violation; or

(c) At any time, the commission or its executive director may publicly disclose the date of an upcoming stewards' hearing; or

(d) At any time, the commission or its executive director may publicly disclose other information in the best interests of racing.

(2) Situations giving rise to the disclosure of information by the commission or its executive director may include the following:

(a) Information pertaining to an alleged regulatory violation has been previously publicly disclosed by the racing participant or any employee or agent of the racing participant;

(b) In the case of an alleged medication violation, if the commission's laboratory has returned a positive finding and the racing participant has been notified of the results of the split sample pursuant to 810 KAR 8:010;

(c) In the case of an alleged medication violation, if the commission's laboratory has returned a positive finding and the racing participant has not exercised his or her right to further laboratory testing; or

(d) For other reasons in the best interests of racing.

Section 2. Stewards' and Judges' Hearings.

(1) A stewards' or judge's hearing, as applicable, shall be conducted by a state steward or a state judge unless waived in writing by the party charged with the violation. A stewards' or judges' hearing shall be conducted no more than sixty (60) days after either:

(a) the racing participant is notified of an alleged violation, or

(b) if the racing participant requests split laboratory results, the date on which the participant receives those results.

(2) The stewards or judges may extend the sixty (60) day deadline in their sole discretion, upon demonstration of exigent circumstances.

(3)[(2)] At least two (2) stewards or judges must be present at all times during the hearing. All three (3) stewards or judges shall review the evidence and testimony prior to issuing a ruling. A ruling shall be made by all three (3) stewards or judges sitting in the matter.

(4)[(3)] A party charged with a violation other than a routine riding offense occurring in a race shall be given written notice of the stewards' or judges' hearing, unless waived in writing by the party charged.

(5)[(4)] Public attendance at stewards' and judges' hearings is allowed. Nothing in this section limits the authority of the presiding

stewards or judges to order closure of a hearing or to make other protective orders to the extent necessary or proper to satisfy the United States Constitution, the Kentucky Constitution, federal or state statute, or other law, such as laws protecting privileged, confidential, or other protected information. [Stewards' and judges' hearings shall be closed, and the stewards and judges shall make no public announcement concerning a matter under investigation until the conclusion of the hearing.]

(6)[(5)] A state steward or a state judge shall conduct the hearing in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence.

(7)[(6)] Testimony shall be given under oath and a record shall be kept by use of an audio recorder or by court reporter's transcript. The party charged with the violation may, however, waive the recording and the transcription of the testimony. The stewards or judges shall not be required to receive testimony in cases where their ruling is based solely upon a review of the race replay.

(8)[(7)] If, after the hearing, the stewards or judges find that a statute or an administrative regulation has been violated, they shall promptly issue a written ruling setting forth the:

(a) Full name of every person charged with the violation;

(b) Identification of licensees charged with the violation;

(c) Statute or administrative regulation number and pertinent parts of the statute or administrative regulation violated;

(d) Findings; and

(e) Penalty.

(9)[(8)] Copies of the ruling shall be delivered to:

(a) Each party in interest;

(b) The commission; and

(c) The office of the Association of Racing Commissioners International, and in Standardbred racing, to the United States Trotting Association.

(10)[(9)] A party who is the subject of an order or ruling of the stewards or judges may apply for a commission hearing pursuant to KRS Chapter 13B, except as to:

(a) Determinations of whether a horse or horses in a race shall be disqualified for fouls committed during the race; or

(b) Findings of fact as to matters occurring during and incident to the running of a race.

(11)[(10)] An application to the commission for review of a stewards' or judges' order or ruling shall be made within ten (10) days after the order or ruling is issued in writing on the "Notice of Appeal," KHRC 9-010-1.

(12)[(11)] An application to the executive director for a stay of a stewards' or judges' order or ruling shall be made in writing within ten (10) days after the order or ruling is issued on the "Request for Stay Pending Appeal", KHRC 9-010-2.

Section 3.[Section 2.] Frivolous Appeals. The commission may determine that an appeal of a stewards' or judges' order or ruling, or any other administrative appeal to the racing commission by a licensee or other person participating in Kentucky horse racing, is frivolous. An appeal shall be presumed to be frivolous if:

(1) The applicant seeks review by the commission but fails, without good cause, to appear for proceedings;

(2) The applicant attends the commission hearing but fails, without good cause, to offer evidence to support the application for review; or

(3) The appeal is totally lacking in merit such that it appears to have been taken in bad faith.

Section 4.[Section 3.] Commission Hearings.

(1) Except where precluded by another provision of KRS Chapter 230 or this administrative regulation, commission hearings shall be conducted in accordance with KRS Chapter 13B.

(2) Copies of final commission orders or rulings related to licensing of individuals shall be forwarded to the office of the Association of Racing Commissioners International, and, in standardbred racing, to the United States Trotting Association.

Section 5.[Section 4.] Appeal from Commission Order. A

VOLUME 48, NUMBER 12– JUNE 1, 2022

person or licensee aggrieved by an order or decision of the commission may appeal to the Franklin Circuit Court in accordance with KRS 230.330.

Section 6. [~~Section 5.~~] Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) The "Notice of Appeal", KHRC 9-010-1, 11/2018; and
- (b) The "Request for Stay Pending Appeal", KHRC 9-010-2, 11/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the KHRC Web site at <http://khrc.ky.gov>.

JONATHAN RABINOWITZ, Chairman
RAY PERRY, Secretary

APPROVED BY AGENCY: May 5, 2022

FILED WITH LRC: May 11, 2022 at 2:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 22, 2022 at 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 July 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, 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 administrative regulation sets forth procedures for the commission to conduct stewards' and judges' hearings, and the appropriate procedure for appeals from those hearings.

(b) The necessity of this administrative regulation: This regulation is necessary to allow racing participants the right to a stewards' or judges' hearing for alleged violations of the commission's regulations and statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of KRS 230.320 and 230.370, which explicitly provide for stewards' and judges' hearings.

(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 230.320 and 230.370, by providing procedures and the explicit right to a stewards' or judges' hearing.

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

(a) How the amendment will change this existing administrative regulation: There are three (3) major proposed changes to this regulation. First, the commission or its executive director will be allowed to publicly disclose information about an alleged violation, if such information will not unduly impact an investigation. Second, a stewards' or judges' hearing shall be conducted no more than 60 days after the notification of a violation or the receipt of split laboratory results, if requested. The stewards or judges may

extend that date upon demonstration of exigent circumstances. Third, public attendance will be allowed at stewards' or judges' hearings.

(b) The necessity of the amendment to this administrative regulation: This proposed amendment is necessary to improve transparency, in accordance with the national and international trends.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.320 and 230.370 explicitly authorize stewards' and judges' hearings. This amendment conforms to the content of the authorizing statutes by improving the procedures associated with stewards' and judges' hearings.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the authorizing statutes by making stewards' and judges' hearings more transparent.

(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 transparent procedures regarding stewards' and judges' hearings and the investigations of regulation or statute violations. In 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 question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will have to take no new steps to comply with this proposed amendment. The commission will take all steps necessary to ensure transparent investigations and hearings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No new costs are anticipated to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Participants in racing will benefit from clearly defined rules that enhance the integrity of racing. In addition, racing participants will benefit from more transparency associated with investigations and hearings.

(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: The Kentucky Horse Racing Commission covers the costs of administering and enforcing 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: No additional fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increases 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

(1) What 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 230.320 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.

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

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

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Costs will not be affected by this amendment.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Costs will not be affected by this amendment.

(c) How much will it cost the regulated entities for the first year? No costs are associated with this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? No costs are associated with this amendment in subsequent years.

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

Cost Savings (+/-): neutral.
Expenditures (+/-): neutral.
Other Explanation: none.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This amendment will not have a major economic impact, as defined above.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. No federal mandate is associated with this amendment.

(2) State compliance standards. N/A.

(3) Minimum or uniform standards contained in the federal mandate. N/A.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A.

(5) Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. N/A.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(Amendment)

815 KAR 7:120. Kentucky Building Code.

RELATES TO: KRS 132.010, 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.260, 198B.990, 227.300, 227.550(7)
STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) and 198B.050 require the department to promulgate a mandatory uniform state building code that establishes standards for the construction of all buildings in the state. This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions.

- (1) "Building" is defined by KRS 198B.010(4).
- (2) "Department" is defined by KRS 198B.010(11).
- (3) "Industrialized building system" or "building system" is defined by KRS 198B.010(16).
- (4) "Manufactured home" is defined by KRS 227.550(7).
- (5) "Single-family dwelling" or "one (1) family dwelling" means a single unit that:
 - (a) Provides complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation; and
 - (b) Is not connected to another[~~unit or~~] building.
- (6) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.
- (7) "Two (2) family dwelling" means a building containing not more than 2 dwelling units that are connected.

Section 2. Building Code. The 2015 International Building Code shall be the mandatory state building code for all buildings constructed in Kentucky except that:

- (1) The Kentucky amendments in the 2018 Kentucky Building Code shall supersede any conflicting~~conflicting~~ provision in the 2015 International Building Code;
- (2) One (1) family dwellings, two (2) family dwellings, and townhouses shall be governed by 815 KAR 7:125; and
- (3) Manufactured homes shall be governed by KRS 227.550 through 227.665.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the department.

- (1) Fast track elective.
 - (a) A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee.
 - (b) The additional fifty (50) percent fee shall not be less than \$400 and not more than \$3,000.
 - (c) The entire fee shall be paid with the initial plan submission.
- (2) New buildings.
 - (a) The department's inspection fees shall be calculated by multiplying:
 - 1. The cost per square foot of each occupancy type as listed in Table 121.3.1 in subsection (3) of this section; and
 - 2. The square footage of the outside dimensions of the building.
 - (b) The fee for a building with multiple or mixed occupancies shall be calculated using the cost per square foot multiplier of the predominant use.

VOLUME 48, NUMBER 12– JUNE 1, 2022

(c) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(3) Table 121.3.1, Basic Department Fee Schedule. The basic plan review or inspection fee shall be as established in Table 121.3.1 in this subsection.

OCCUPANCY TYPE	COST PER SQUARE FOOT
Assembly	Sixteen (16) cents
Business	Fifteen (15) cents
Day care centers	Fifteen (15) cents
Educational	Fifteen (15) cents
High Hazard	Sixteen (16) cents
Industrial factories	Fifteen (15) cents
Institutional	Sixteen (16) cents
Mercantile	Fifteen (15) cents
Residential	Fifteen (15) cents
Storage	Fifteen (15) cents
Utility and Miscellaneous	Thirteen (13) cents
Production greenhouse	Ten (10) cents

(4) Additions to existing buildings.

(a) Plan review fees for additions to existing buildings shall be calculated by multiplying the cost per square foot of the occupancy type listed in Table 121.3.1 in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition and any other changes made to the existing build.

(b) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(5) Change in use.

(a) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in Table 121.3.1 in subsection (3) of this section by using the total square footage of the entire building or structure pursuant to the new occupancy type as determined by the outside dimensions.

(b) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of multiplying the:

1. Cost of the alterations or repairs by 0.0030; or

2. Total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans pursuant to this subsection shall be \$285.

(7) Specialized fees. In addition to the fees established by subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule. The inspection fee for automatic sprinklers shall be as established in Table 121.3.9 in this paragraph;

NUMBER OF SPRINKLERS	FEE
Four (4) – twenty-five (25)	\$150
Twenty-six – 100	\$200
101 – 200	\$250
201 – 300	\$275
301 – 400	\$325
401 – 750	\$375
OVER 750	\$375 plus thirty (30) cents per sprinkler over 750

(b) Fire detection system review fee.

1. Zero through 20,000 square feet shall be \$275; and

2. Over 20,000 square feet shall be \$275 plus thirty (30) dollars for each additional 10,000 square feet in excess of 20,000 square feet;

(c) The standpipe plan review fee shall be \$275. The combination of stand pipe and riser plans shall be reviewed pursuant to the automatic sprinkler review fee schedule;

(d) Carbon dioxide suppression system review fee.

1. One (1) through 200 pounds of agent shall be \$275; and
2. Over 200 pounds of agent shall be \$275 plus five (5) cents per pound in excess of 200 pounds;

(e) Clean agent suppression system review fee.

1.

a. Up to thirty-five (35) pounds of agent shall be \$275; and
b. Over thirty-five (35) pounds shall be \$275 plus ten (10) cents per pound in excess of thirty-five (35) pounds; and

2. The fee for gaseous systems shall be ten (10) cents per cubic foot and not less than \$150;

(f) Foam suppression system review fee.

1. The fee for review of [a-]foam suppression system shall be fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.

2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed pursuant to the automatic sprinkler review fee schedule.

3. The fee for review of plans pursuant to subclause 1. of this paragraph shall not be less than \$275 or more than \$1,500;

(g) The commercial range hood review fee shall be \$225 per hood;

(h) Dry chemical systems review fee (except range hoods).
The fee for review of:

1. One (1) through thirty (30) pounds of agent shall be \$275; and

2. Over thirty (30) pounds of agent shall be \$275 plus twenty-five (25) cents per pound in excess of thirty (30) pounds; and

(i) The flammable, combustible liquids or gases, and hazardous materials plan review fee shall be \$100 for the first tank, plus fifty (50) dollars for each additional tank and \$100 per piping system including valves, fill pipes, vents, leak detection, spill and overflow detection, cathodic protection, or associated components.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "2015 International Building Code", International Building Code Council, Inc.; and

(b) "2018 Kentucky Building Code", Third Edition, March 2022[Second Edition, May 2020].

(2) The[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, 8:00 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

RAY A. PERRY, SECRETARY

RICK W. RAND, COMMISSIONER

APPROVED BY AGENCY: May 12, 2022

FILED WITH LRC: May 13, 2022 at 9:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The 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 July 31, 2022 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Building Code.

(b) The necessity of this administrative regulation: KRS 198B.040(7) and 198B.050 require the department to adopt and promulgate a mandatory Uniform State Building Code that establish the standards for the construction of all buildings, as defined in KRS 198B.010, in the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.040(7) and 198B.050 require the department to adopt and promulgate a mandatory Uniform State Building Code that establish the standards for the construction of all buildings, as defined in KRS 198B.010, in the state. This administrative regulation incorporates by reference the 2015 International Building Code and 2018 Kentucky Building Code—the “Kentucky amendments”.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the Kentucky Building Code, as required by KRS 198B.040(7) and 198B.050 for the enforcement of the uniform state building code, incorporating all applicable laws into its processes.

(2) If 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 updated standards for controlled environment agriculture facilities in the Kentucky Building Code and corrects grammatical and technical errors in the 2018 Kentucky Building Code. Specifically: 1. Amends Section 201, Definitions, to include a definition of controlled environment agriculture facilities. 2. Amends Section 201, Definitions, to update the definition of commercial greenhouse to clarify public access and research uses. 3. Amends Section 304.1 by removing reference to 902 KAR 20:073. 4. Amends Section 306.3 Low-hazard factory industrial, Group F-2 to include packing and shipping areas of controlled environment agriculture facilities as an example of an F-2 occupancy. 5. Amends Section 433 to include references to controlled environment agriculture facilities and the applicable code standards for these facilities. 6. Amends Section 507.2.1.2 Open space elimination to add an exception to not require public ways or yards of 60 feet width where growing areas of controlled environment agriculture facilities adjoin packing and shipping areas of controlled environment agriculture facilities. 7. Amends section 507.3 by adding Section 507.3.1 to include the language found in the 507.2.1.2 exception.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement code changes to the incorporated material. Specifically, the amendments related to controlled environment agriculture facility result from the requests of industry professionals, code professionals, and the public.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.040(7) and 198B.050 require the department to adopt and promulgate a mandatory Uniform State Building Code that establish the standards for the construction of all buildings, as defined in KRS 198B.010, in the state. This administrative regulation incorporates by reference the 2015 International Building Code and 2018 Kentucky Building Code—the “Kentucky amendments”.

(d) How the amendment will assist in the effective administration of the statutes: These amendments to the Kentucky Building Code will enhance public safety and allow the construction industry to use current technologies, methods, and materials.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All construction projects subject to the Kentucky Building Code are affected by this administrative regulation. Architects, engineers, contractors, project managers,

businesses, local governments, and Department personnel 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 identified entities must comply with any applicable amendments to the Kentucky Building Code.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Affected entities will likely have no additional costs in complying with these amendments. They may save money as a result of these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include a more clear building code with fewer errors, flexibility in building design, and increased clarity of construction standards.

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

(a) Initially: There are no anticipated additional costs to implement this administrative regulation.

(b) On a continuing basis: There are no anticipated additional costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is anticipated to result in no additional costs to the agency. Any agency costs resulting from the implementation and enforcement of this administrative regulation will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment will not necessitate an increase in fees or funding. No fees are raised or changed by this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not change previously established fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all regulated entities are subject to the same amended requirements.

FISCAL NOTE

(1) What 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 Housing, Buildings and Construction and building inspection and plan review programs of local governments.

(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 198B.040(7) and KRS 198B.050.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 anticipated to generate additional 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 amendment is not anticipated to generate additional revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this amendment in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to

administer this amendment for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment may save certain regulated entities the cost of the installation of fire suppression equipment in facilities where the amendment clarifies that they are not required in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This amendment may save certain regulated entities the cost of the installation of fire suppression equipment in facilities where the amendment clarifies that they are not required in subsequent years.

(c) How much will it cost the regulated entities for the first year? This amendment will not require additional expenditures by regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? This amendment will not require additional expenditures by regulated entities for subsequent years.

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

Cost Savings (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact, as defined above.

**PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation, and Air Conditioning
(Amendment)**

815 KAR 8:010. Licensing requirements for master HVAC contractors and journeyman HVAC mechanics.

RELATES TO: KRS 198B.650, 198B.654, 198B.656, 198B.658, 198B.659, 198B.660, 198B.664, 198B.668, 198B.672, 198B.676

STATUTORY AUTHORITY: KRS 198B.654(1), 198B.658, [198B.660(1), (2),] 198B.664(1), (3), 198B.676(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the department to promulgate administrative regulations in accordance with KRS Chapter 13A to administer, coordinate, and [necessary to] enforce the provisions of KRS 198B.650 through 198B.689 and to conduct HVAC examinations. KRS 198B.658 requires the department to establish fees [qualifications] for HVAC licensure and certification. [KRS 198B.660(1) and (2) require the department to establish examination requirements.] KRS 198B.664 requires the department to establish requirements, including fees, for license renewal and inactive licenses. KRS 198B.676(1) requires the department to establish fees by administrative regulation. This administrative regulation establishes the licensure requirements for master HVAC contractors and journeyman HVAC mechanics.

Section 1. General Requirements. (1) Master HVAC

Contractor.

(a) Supervision. The master HVAC contractor shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee or the company that the licensee represents, whichever is applicable.

(b) Company license. A licensee who is an employee of a company and whose license represents the company, if the licensee ceases to represent the company or if the name of the company changes, shall:

- 1. Notify the department in writing; and
- 2. Request a change of information

(c) Death of a master HVAC contractor.

1. If the master HVAC contractor representing a company dies, the company shall notify the department within ten (10) days of the master HVAC contractor's death;

2. The 180 day interim period described in KRS 198B.667 shall begin on the date the master HVAC contractor dies.

3. The company shall not be required to renew the deceased's master HVAC contractor license, if the license renewal date falls within the 180 interim period.

4. The company shall not use the deceased master HVAC contractor license after the expiration date of the interim period.

5. The company shall notify the department when the company has a replacement master HVAC contractor to represent the company on or before the expiration date of the interim period.

(2) Journeyman HVAC mechanic Supervision. The journeyman shall:

(a) Be physically on site;

(b) Personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration, and repair of HVAC systems; and

(c) Otherwise operate under the general direction and supervision of the master HVAC contractor.

Section 2. Initial Application Requirements.

(1) Filing the application.

(a) Master HVAC contractor application. An applicant seeking a master HVAC contractor license shall submit to the department:

1. A completed Master HVAC Contractor License Application on Form HVAC 1;

2. An initial license application fee of \$250 for a twelve (12) month license;

3. Proof of the applicant's experience as required by KRS 198B.658(1)(c) and this administrative regulation; and

4. Proof of insurance as required by KRS 198B.668.

(b) If the master HVAC contractor applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(c) Journeyman HVAC mechanic application. An applicant seeking a journeyman HVAC mechanic license shall submit to the department:

1. A completed Journeyman HVAC Mechanic License Application on Form HVAC 2;

2. An initial license application fee of fifty (50) dollars for a twelve (12) month license; and

3. Proof of the applicant's experience as established by KRS 198B.658(2)(c).

(d) Initial license fees may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month.

(e) Master HVAC contractor applicants and journeyman HVAC mechanic applicants shall provide to the department proof of satisfactory completion of the respective examination required by Section 4 of this administrative regulation.

(f) Master HVAC contractor applicants and journeyman HVAC mechanic applicants shall provide to the department a passport-sized, color photograph of the applicant taken within the past six (6) months.

(2) Termination of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date

the application is submitted to the department.

(b) At the end of one (1) year, the application shall be voided.

Section 3. An applicant for reciprocity shall:

(1) Comply with the requirements established in the reciprocity agreement between Kentucky and the state in which the applicant is licensed;

(2)

(a) For a Master HVAC Contractor license, an applicant shall comply with Section 2(1)(a) and (b) of this administrative regulation,

(b) For a Journeyman HVAC mechanic license, an applicant shall comply with Section 2(1)(c) of this administrative regulation.

(c) If applying for both licenses, an application fee shall be submitted for each license with each application form.

Section 4. Examinations.

(1) The HVAC examinations shall be developed, administered, and scored by the department or its designee.

(2) Master HVAC Contractor examination requirements. The examination shall test the applicant's knowledge of:

(a) Codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling, or alteration of all types of HVAC systems; and

(b) Law and regulation relating to HVAC business.

(3) Journeyman HVAC mechanic examination requirements.

(a) The examination shall test the applicant's knowledge of codes, standards, and current technological and industry recommended practices with respect to the proper installation, maintenance, and repair, remodeling, or alteration of all types of HVAC systems.

(b) A journeyman HVAC mechanic applicant may apply the passage of a master HVAC contractor's examination for the journeyman HVAC mechanic's examination requirement. The applicant may use the same master HVAC contractor's examination score to satisfy the master HVAC contractor's examination requirement if the examination score is valid pursuant to subsection (7) of this section.

(4) Except as provided in subsection (8) of this section, an applicant shall pass with a score of at least seventy (70) percent on the examination.

(5) Examination requests.

(a) Examination applicants who wish to take any HVAC examination provided by the department shall submit to the department:

1. A completed HVAC Examination Registration Form, Form HVAC-4;

2. The appropriate, non-refundable examination fee:

a. For a master HVAC contractor, \$150; or

b. For a journeyman HVAC mechanic, fifty (50) dollars; and

3. A passport-sized color photograph of the applicant taken within the past six (6) months.

(b) Notice of the time and place of examinations shall be given by the department at least one (1) week prior to the date of the examination to each person who has a registration form on file.

(c) If an applicant fails to complete the department-provided examination within one (1) year from the date of the first notice of examination, the application shall be void.

(d) An applicant who fails an examination may request to retake the examination. Except for the examination fee, an applicant shall not resubmit the requirements in paragraph (a) of this subsection.

(e)[(a)] A request to sit for [the] an examination provided by any facility other than the department shall be made directly to a [the] testing facility [facilities] approved by the department.

(f)[(b)] A list of facilities and contact information shall be provided by the department to applicants upon request.

(6) The examination shall be provided as set forth in KRS 198B.660.

(7) A passing score on the examination shall be valid for a period of three (3) years.

(8) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department shall recognize another examination as equivalent to the examinations administered by the department if the person or group submitting the examination demonstrates that the examination covers the same material and requires the same level of knowledge as the department's examination.

(9) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request.

Section 5. Experience Requirements.

(1) Records of experience. An applicant's experience shall be listed on the application form.

(a) Proof of experience shall be provided by:

1. A W-2 form;

2. An affidavit by a master HVAC contractor who directed and supervised the applicant;

3. A copy of a current master HVAC contractor license, journeyman HVAC mechanic license, or equivalent, held by the applicant in a state other than Kentucky, if the state requires licensure or equivalent.

4. Verifiable documentation demonstrating the nature and extent of HVAC contracting work performed in a state other than Kentucky, if the state does not require licensure or the equivalent; or

5. Department of Defense form DD 214.

(b) Additional proof of experience shall be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient or nonexistent.

(2) One (1) year of HVAC experience shall consist minimally of 1,500 hours of HVAC work in a contiguous twelve (12) month period.

Section 6. Inactive License Status.

(1) A licensee may request that license be placed in inactive status.

(2) A master HVAC contractor licensee in inactive status shall not be required to maintain insurance as required by KRS 198B.668.

(3) A license that is in inactive status shall be exempt from annual renewal.

(4) A certified HVAC inspector may be licensed as a master HVAC contractor or licensed as a journeyman HVAC mechanic, but shall place the license in inactive status while having an active HVAC inspector certification.

(5) Performing HVAC work while holding an inactive license shall be grounds for revocation or suspension of all HVAC licenses and certifications held by the licensee.

Section 7. Renewal, Restoration, Reinstatement, and Reactivation Requirements and Procedures.

(1) Filing for renewal. A master HVAC contractor and a journeyman HVAC mechanic shall submit to the department:

(a) A completed renewal application notice;

(b)

1. A renewal fee of \$250 made payable to the Kentucky State Treasurer for a master HVAC contractor; or

2. A renewal fee of fifty (50) dollars made payable to the Kentucky State Treasurer for a journeyman HVAC mechanic; and

(c) Proof of annual continuing education attendance in accordance with 815 KAR 2:010; and

(d) Proof of insurance as required by KRS 198B.668 for a master HVAC contractor.

(2)(a) Except for a license placed in inactive status, application for license renewal shall be filed no later than the last day of the licensee's birth month.

(b) A license shall be renewed each year.

(c) A license that is not timely renewed shall immediately expire.

(3)(a) The renewal fee shall be paid prior to renewal.

(b) The department shall send a renewal application notice to each licensee each year to be returned with the required fee.

(4) A renewal application notice filed late, but not more than

sixty (60) days after the expiration of the license, shall be accepted, but a restoration fee, as established in Section 8(1) of this administrative regulation, shall be added to the renewal fee.

(5)(a) A former licensee whose license has terminated as established in KRS 198B.664(3) may have his or her license reinstated if the licensee satisfies the application requirements for renewal as established in subsection 1 of this section and submits a reinstatement fee as established in Section 8(4) of this administrative regulation no later than three (3) years from the date the former license was terminated.

(b) A former licensee seeking licensure under this administrative regulation, but whose terminated license was not timely reinstated as established in paragraph (a) of this subsection, shall be required to satisfy all requirements applicable to new applicants for initial licensure as established in this administrative regulation.

(6) An inactive license shall be reactivated upon payment of the annual renewal fee, the reactivation fee, and upon compliance with the continuing education requirements established in 815 KAR 2:010.

(7) If an initial license is for a period of less than twelve (12) months, the initial license fee shall be reduced on a pro rata basis.

(8) The application for renewal, restoration, reinstatement, or reactivation shall be denied if the applicant fails to:

(a) Pay any applicable department fee;

(b) Comply with the continuing education requirements established in 815 KAR 2:010; or

(c) Provide the current insurance certificate required by KRS 198B.668, if a master HVAC contractor.

(9) A licensee who has not previously provided a passport-sized color photograph shall provide one (1) with the licensee's next application for renewal.

Section 8. Special Service Fees. In addition to the other fees required by this administrative regulation, the special fees established in this section shall also be applied.

(1) Restoration fee.

(a) The fee for restoration of an expired master HVAC contractor license shall be \$125.

(b) The fee for restoration of an expired journeyman HVAC mechanic license shall be twenty-five (25) dollars.

(2) Inactive status fee. The fee to place a license into inactive status shall be twenty (20) dollars.

(3) Reactivation fee. The fee for reactivation of an inactive license shall be twenty (20) dollars.

(4) Reinstatement fee.

(a) Master HVAC contractor. The fee for reinstatement of a terminated master contractor shall be \$250 for each twelve (12) month period, or additional fraction thereof, following the date the license was terminated, not to exceed \$750.

(b) Journeyman HVAC mechanic. The fee for reinstatement of a terminated journeyman HVAC mechanic license shall be fifty (50) dollars for each twelve (12) month period, or additional fraction thereof, following the date the license was terminated, not to exceed \$150.

Section 9. Revocation or Suspension of License. A license issued pursuant to this administrative regulation shall be subject to suspension or revocation by the department for any of the reasons stated in KRS 198B.672.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Master HVAC Contractor License Application", Form HVAC 1, May 2020; ~~and~~

(b) "Journeyman HVAC Mechanic License Application", Form HVAC 2, May 2020; ~~and~~

(c) "HVAC Examination Registration Form", Form HVAC-4, March 2022.

(2) This material may be inspected copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Heating, Ventilation, and Air Conditioning[HVAC Division], 500 Mero Street, Frankfort, Kentucky

~~40601~~[~~401 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412~~], Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

RAY A. PERRY, SECRETARY

RICK W. RAND, COMMISSIONER

APPROVED BY AGENCY: May 12, 2022

FILED WITH LRC: May 13, 2022 at 9:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022 at 10:00 a.m., Eastern Time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals' interest in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The 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 July 31, 2022 at 11:59 p.m., Eastern Time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for master HVAC contractors and journeyman HVAC mechanics.

(b) The necessity of this administrative regulation: KRS 198B.654(1) requires the department to promulgate administrative regulations in accordance with KRS Chapter 13A to administer, coordinate, and enforce the provisions of KRS 198B.650 through 198B.689 and to conduct HVAC examinations. KRS 198B.658 requires the department to establish fees for HVAC licensure and certification. KRS 198B.664 requires the department to establish requirements, including fees, for license renewal and inactive licenses. KRS 198B.676(1) requires the department to establish fees by administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the department to promulgate administrative regulations in accordance with KRS Chapter 13A to administer, coordinate, and enforce the provisions of KRS 198B.650 through 198B.689 and to conduct HVAC examinations. KRS 198B.658 requires the department to establish fees for HVAC licensure and certification. KRS 198B.664 requires the department to establish requirements, including fees, for license renewal and inactive licenses. KRS 198B.676(1) requires the department to establish fees by administrative regulation. This administrative regulation establishes the licensure requirements for master HVAC contractors and journeyman HVAC mechanics including fees, experience, and examination requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the licensure, fee, and examination requirements for master HVAC contractors and journeyman HVAC mechanics, which is required by KRS 198B.654, KRS 198B.658, KRS 198B.664, and KRS 198B.676.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the procedures and fees for the department-administered journeyman HVAC mechanic

exam and master HVAC contractor exam. This amendment also creates a form, incorporated by reference that is required for registration if an applicant wishes to take the department-administered exams.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish fees and procedures for the implementation of department-administered HVAC examinations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the department to promulgate administrative regulations in accordance with KRS Chapter 13A to administer, coordinate, and enforce KRS 198B.650 to 198B.689 and to conduct examinations. KRS 198B.676(b) requires the department to establish by administrative regulation examination fees for master HVAC contractors and journeyman HVAC mechanics.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the registration procedures and fee requirements for department-administered HVAC examinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any applicant who wishes to take the department-administered HVAC examinations.

(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: If an applicant wishes to take the department-administered HVAC examination they will be required to complete a registration form and pay the applicable examination fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Journeyman HVAC mechanic examination fees are \$50, master HVAC contractor examination fees are \$150.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The department-administered examination was developed at the request of members of the HVAC industry who indicated that third-party testing centers presented unanticipated difficulties for examinees.

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

(a) Initially: Minor additional costs for travel and time of department employees to administer the examination. These costs will be covered by examination fees.

(b) On a continuing basis: Minor additional costs for travel and time of department employees to administer the examination. These costs will be covered by examination fees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Minor additional costs for travel and time of department employees to administer the examination. These costs will be covered by examination fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An examination fee is established by this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: An examination fee is established by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all regulated entities are subject to the same amended requirements.

FISCAL NOTE

(1) What 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 Housing, Buildings and Construction, Division of Heating, Ventilation and Air Conditioning.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 198B.654(1) requires the department to promulgate administrative regulations in accordance with KRS Chapter 13A to administer, coordinate, and enforce the provisions of KRS 198B.650 through 198B.689 and to conduct HVAC examinations. KRS 198B.658 requires the department to establish fees for HVAC licensure and certification. KRS 198B.664 requires the department to establish requirements, including fees, for license renewal and inactive licenses. KRS 198B.676(1) requires the department to establish fees by administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate \$50 per department-administered journeyman HVAC mechanic license examination and \$150 per department-administered master HVAC contractor license examination for the first year. As there are also third-party testing facilities that applicants may utilize, it is unknown how many examinations the department will administer 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 amendment will generate \$50 per department-administered journeyman HVAC mechanic license examination and \$150 per department-administered master HVAC contractor license examination for subsequent years. As there are also third-party testing facilities that applicants may utilize, it is unknown how many examinations the department will administer in subsequent years.

(c) How much will it cost to administer this program for the first year? Cost will be contingent upon demand for department-administered examinations. Pursuant to KRS 198B.676(1)(b), agency costs to administer the examination are covered by the examination fees.

(d) How much will it cost to administer this program for subsequent years? Cost will be contingent upon demand for department-administered examinations. Pursuant to KRS 198B.676(1)(b), agency costs to administer the examination are covered by the examination fees.

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: Pursuant to KRS 198B.676(1)(b), agency costs to administer the examination are covered by the examination fees. Revenues and expenditures associated with this amendment are contingent upon demand for department-administered HVAC examinations.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This amendment may save regulated entities the difference between the cost of a Department-administered examination and a third-party administered examination in the first year, if they elect to utilize this option.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This amendment may save regulated entities the difference between the cost of a Department-administered examination and a third-party administered examination in subsequent years, if they elect to utilize this option.

(c) How much will it cost the regulated entities for the first year? This amendment will cost the regulated entities who elect to take the Department-administered examination the applicable examination fee for the first year.

(d) How much will it cost the regulated entities for subsequent years? This amendment will cost the regulated entities who elect to take the Department-administered examination the applicable examination fee for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact, as defined above.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Fire Prevention
(Amendment)

815 KAR 10:060. Kentucky standards of safety.

RELATES TO: KRS 198B.050, 227.300, [~~227.320,~~] 227.330, 227.331, 227.990, 234.140

STATUTORY AUTHORITY: KRS 227.300(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.300(1) requires 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, 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 methods of construction met the uniform state building code requirements, as applicable, at the time of construction.

(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 facilities licensed by the Kentucky Cabinet for Health and Family Services. A local fire chief may request authority for the inspection and enforcement responsibilities of licensed facilities from the State Fire Marshal.

(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 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 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 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 by the State Fire Marshal or a designee to ensure that the structure is neither a distinct fire hazard nor 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) The State Fire Marshal or a local fire chief shall use the standards established in this administrative regulation to identify and to order the correction of a distinct fire hazard acting in

accordance with the procedures established in KRS Chapter 227 and this administrative regulation. In exercising authority granted, the following shall be applicable:

1. NFPA 1, Uniform Fire Code, 2018 edition, and the NFPA referenced standards included in Chapter 2 of NFPA 1 except:

a. NFPA 403, Guide for Aircraft Rescue and Fire Fighting Operation, 2018 edition;

b. NFPA 1031, Standard for Professional Qualifications for Fire Inspectors and Plan Examiner, 2014 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. NFPA 5000, Building Construction and Safety Code, 2018, 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. Code reference 13.3.2.26, High Rise Buildings;

n. Code reference 13.3.2.8, Existing Assembly Occupancies; and

o. 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 Edition;

2. NFPA 101, Life Safety Code, 2018 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 Edition; and

4. 815 KAR 7:120, Kentucky Building Code.

(d) 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 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 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.

(2) Services 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.

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.

(2) Fire protection systems testing and inspection.

(a) Reporting. Except as established in paragraph (c) of this subsection, an inspection 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.

(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.

2. 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 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.

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.

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 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 edition;

(b) NFPA 101, "Life Safety Code", 2018 edition;

(c) NFPA 70, "National Electrical Code®", 2018 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.

RAY PERRY, Secretary
RICK W. RAND, Commissioner

APPROVED BY AGENCY: May 12, 2022

FILED WITH LRC: May 13, 2022 at 9:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022 at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The 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 July 31, 2022 at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Benjamin Siegel

(1) Provide a brief summary of:

(a) What this administrative regulation does: 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.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky Standards of Safety, which are required, pursuant to KRS 227.300(1), to provide a reasonable degree of safety for human life against the exigencies of fire and panic and insuring as far as is practicable against fire loss.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.300(1) requires the commissioner to promulgate reasonable administrative regulations based on good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as practicable against fire loss. These standards are to supplement the Uniform State Building Code, the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety, as required by KRS 227.300(1).

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

(a) How the amendment will change this existing administrative regulation: The amendment specifies that the State Fire Marshal has exclusive inspection jurisdiction over Kentucky Cabinet for Health and Family Services-licensed facilities and further that a local fire chief may request jurisdiction from the State Fire Marshal over licensed facilities.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add the above-detailed jurisdictional language and clarify that the State Fire Marshal may potentially grant authority to local fire chiefs for licensed facility inspections. This enables greater fire safety throughout the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227.300(1) requires the commissioner to promulgate reasonable administrative regulations based on good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a

reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as practicable against fire loss. These standards are to supplement the Uniform State Building Code, the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the Kentucky Standards of Safety to supplement the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety, as required by KRS 227.300(1). It clarifies jurisdictional boundaries and better explains how local fire chiefs may request certain jurisdictional authority.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Department of Housing, Buildings and Construction, local fire officials, and fire alarm inspectors.

(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: Local fire officials will have the option to request jurisdiction over CHFS-licensed facilities from the State Fire Marshal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost associated with complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment provides for clarity as to jurisdictional boundaries as well as increased facilitation of fire safety throughout the Commonwealth.

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

(a) Initially: There are no anticipated additional costs to implement this administrative regulation initially.

(b) On a continuing basis: There is no ongoing cost associated with the implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the department. Any cost resulting from this amendment will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all regulated entities are subject to the same amended requirements.

FISCAL NOTE

(1) What 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 Housing, Buildings and Construction, Division of Fire Prevention and local fire departments or fire inspection programs will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 227.300(1) requires the commissioner to promulgate reasonable administrative regulations based on good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as practicable against fire loss. These standards are to supplement the Uniform State Building Code, the Kentucky Building Code, 815 KAR 7:120, in matters of fire safety.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or 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 anticipated to generate additional revenue for the 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 amendment is not anticipated to generate additional revenue for the state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation is not anticipated to generate cost saving for regulated entities for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation is not anticipated to generate cost saving for regulated entities for the subsequent year.

(c) How much will it cost the regulated entities for the first year? This administrative regulation is not anticipated to generate additional costs for regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation is not anticipated to generate additional costs for regulated entities for subsequent years.

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

Cost Savings (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact, as defined above.

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

902 KAR 2:020. Reportable disease surveillance.

RELATES TO: KRS 214.645, 214.625(5)(c)5, 214.990(1), 215.520, 216B.015, 258.065, 258.990, 311.282, 311.571, 315.010, 321.181(4), 333.020, 333.130

STATUTORY AUTHORITY: KRS 194A.050, 211.090(3), 211.180(1)(a), 214.010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.180(1)(a) authorizes the cabinet to implement a statewide program for the detection, prevention, and control of communicable

diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases that are transmissible to man, and other diseases and health hazards that can be controlled. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet. This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases and to permit an accurate assessment of the health status of the commonwealth.

Section 1. Definitions. (1) "Acid fast bacilli" or "AFB" means the mycobacteria that, if stained, retains color even after having been washed in an acid solution and can be detected under a microscope in a stained smear.

(2) "Health facility" is defined by KRS 216B.015(13).

(3) "Health professional" means a professional licensed under KRS Chapters 311 through 314.

(4) "Healthcare-associated infection" or "HAI" means an infection acquired by a person while receiving treatment for a separate condition in a health care setting.

(5) "Kentucky public health advisory" means a notification to health professionals, health facilities, and laboratories subject to this administrative regulation identifying a new health threat that warrants reporting through the procedures of this administrative regulation.

(6) "Laboratory-confirmed influenza" means influenza diagnosed through testing performed using:

(a) Reverse transcriptase polymerase chain reaction (RT PCR);

(b) Nucleic acid detection; or

(c) Viral culture.

(7) "Medical laboratory" is defined by KRS 333.020(3).

(8) "National Healthcare Safety Network" or "NHSN" means the nation's most widely used healthcare-associated infection (HAI) tracking system as provided to medical facilities by the Centers for Disease Control and Prevention (CDC).

(9) "National reference laboratory" means a laboratory located outside of Kentucky that is contracted by a Kentucky health professional, laboratory, or health facility to provide laboratory testing.

(10) "Novel influenza A virus" means an influenza virus that causes human infection but is different from the seasonal human influenza A virus subtypes and includes viruses predominately of avian and swine origin.

(11) "Nucleic acid amplification test" or "NAAT" means the laboratory test used to target and amplify a single deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) sequence, usually for detecting a microorganism.

(12) "Outbreak" means:

(a) Two (2) or more cases, including HAIs, that are epidemiologically linked or connected by person, place, or time; or

(b) A single case of an HAI not commonly diagnosed.

(13) "Pharmacist" is defined by KRS 315.010(17).

(14) "Post-exposure prophylaxis" or "PEP" means taking an antiretroviral medicine after being potentially exposed to HIV to prevent becoming infected.

(15) "Pre-exposure prophylaxis" or "PrEP" means daily medicine intended to reduce the chance of getting HIV.

(16) "Select agent" means a biological agent or toxin that could pose a severe threat to public health, plant health, animal product, or plant product as determined by the National Select Agent Registry (NSAR) at www.selectagents.gov.

(17) "Veterinarian" is defined by KRS 321.181(4).

Section 2. Notification Standards. (1) Health professionals and facilities.

(a) A health professional or a health facility shall give notification if:

1. The health professional or a health facility makes a probable diagnosis of a disease specified in Section 3, 6, 7, 8, 9, 12, 16, 17, 18, or 19 of this administrative regulation; and

2. The diagnosis is supported by:

a.(i) Clinical or laboratory criteria; and

(ii) Case classifications published by the Centers for Disease Control and Prevention at [https://ndc.services.cdc.gov/\[www.cdc.gov/ndcss\]](https://ndc.services.cdc.gov/[www.cdc.gov/ndcss]); or

b. A health professional's medical opinion that the disease is present.

(b) A single report by a health facility of a condition diagnosed by a test result from the health facility's laboratory shall constitute notification on behalf of the health facility and its laboratory.

(c) A health facility may designate an individual to report on behalf of the health facility's laboratory, pharmacy, and the health facility's other clinical entities.

(d) Notification shall be given to the local health department serving the county in which the patient resides.

(e) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(f) The reporting health professional or health facility shall submit:

1. Information required in Section 5(6) of this administrative regulation; and

2. Clinical, epidemiologic, and laboratory information pertinent to the disease including sources of specimens submitted for laboratory testing.

(2) Medical Laboratories.

(a) A laboratory test result that indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, 6, 7, 8, 9, 12, 16, 17, 18, or 19 of this administrative regulation shall be reported to the local health department serving the county in which the patient resides.

(b) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(c) The reporting laboratory shall submit the information required in Section 5(6) of this administrative regulation.

(3) National Reference Laboratories.

(a) A test result performed by a national reference laboratory that indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in Section 3, 6, 7, 8, 9, 12, 16, 17, 18, or 19 of this administrative regulation shall be reported by the director of a medical laboratory, a health facility, or the health professional that referred the test to the national reference laboratory to the local health department serving the county in which the patient resides.

(b) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(c) The report shall include the information required by Section 5(6) of this administrative regulation.

Section 3. Submission of Specimens to the Kentucky Department for Public Health Division of Laboratory Services. (1) A medical laboratory and a national reference laboratory in receipt of diagnostic specimens originating from the Commonwealth of Kentucky shall send direct specimens or pure clinical isolates for diseases established in subsection (5) of this section to the Division of Laboratory Services for primary or confirmatory testing and related studies.

(2) A medical laboratory or national reference laboratory using non-culture techniques to identify bacterial agents of diarrheal disease, such as enzyme immunoassays (EIAs) or molecular assays, shall attempt isolation of the etiologic agent identified. Pure clinical isolates shall be submitted to the Division of Laboratory Services.

(3) If the culture attempts do not produce a clinical isolate, the direct specimen, submitted in the appropriate preservative, shall be sent to the Division of Laboratory Services. A submitting laboratory shall provide the name of the etiologic agent detected by the non-culture technique at the time of specimen submission.

(4) A medical laboratory performing this test shall continue to follow the state's requirement for the submission of appropriate materials to the state public health laboratory.

(5) A medical or national reference laboratory shall submit pure isolates or, if not available, the direct specimen from the following diseases to the Division of Laboratory Services:

- (a) Botulism, with prior approval from the Division of Epidemiology for testing;
- (b) Brucellosis;
- (c) Campylobacteriosis;
- (d) *Candida auris*;
- (e) Carbapenem-resistant *Acinetobacter*;
- (f) Carbapenem-resistant *Enterobacteriaceae*;
- (g) Carbapenem-resistant *Pseudomonas*;
- (h) Cholera and diseases caused by other *Vibrio* species;
- (i) Diphtheria;
- (j) *Escherichia coli* O157:H7;
- (k) Hemolytic Uremic Syndrome (HUS) – Post Diarrheal;
- (l) Listeriosis;
- (m) Measles;
- (n) Meningococcal infections;
- (o) Rabies, animal;
- (p) Rubella;
- (q) Salmonellosis;
- (r) Shiga toxin-producing *E. coli* (STEC);
- (s) Shigellosis;
- (t) Tuberculosis (TB);
- (u) Tularemia;
- (v) Typhoid fever;
- (w) Vancomycin-intermediate *Staphylococcus aureus*;
- (x) Vancomycin-resistant *Staphylococcus aureus*; and
- (y) Zika, with prior approval from the Division of Epidemiology for testing.

(6) All direct specimens or clinical isolates from enteric disease shall be submitted within seventy-two (72) hours from collection.

Section 4. Laboratory Testing and Submission of Specimens to the Division of Laboratory Services for the Identification of *M. tuberculosis*. (1) For the identification of *M. tuberculosis*, a medical laboratory or national reference laboratory shall perform AFB smear and culture, regardless of rapid molecular testing results (NAAT).

(2) Rapid molecular testing shall be performed for the identification of *M. tuberculosis* on:

(a) Any diagnostic specimen with an AFB smear positive result; or

(b) Any specimen that originates from an individual with clinical or epidemiological evidence suggesting active tuberculosis.

(3) If rapid molecular testing cannot be performed by the medical laboratory or national reference laboratory, the diagnostic specimen shall be sent to the Division of Laboratory Services.

(4) A medical laboratory or national reference laboratory that has a diagnostic specimen test positive for *M. tuberculosis* by rapid molecular testing shall send the remainder of that specimen to the Division of Laboratory Services.

(5) Any diagnostic specimen found to be positive for *M. tuberculosis* by rapid molecular testing or culture testing shall be reported in accordance with Section 7 of this administrative regulation.

Section 5. Reporting Classifications and Methods. (1) Immediate reporting.

(a) A report required by Section 12(1) and (2) of this administrative regulation to be made immediately shall be:

1. Made by telephone to the local health department serving the county in which the patient resides; and

2. Followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

(b) Upon receipt of a report for a disease requiring immediate reporting, the local health department shall:

1. Notify the Kentucky Department for Public Health by telephone; and

2. Assist the department in carrying out a public health response.

(c) Weekend, evening, or holiday immediate notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

(d) For the protection of patient confidentiality, a report using the emergency number shall include:

1. The name of the condition being reported; and

2. A telephone number that can be used by the department to contact the reporting health professional or health facility.

(2) Urgent reporting.

(a) A report made within twenty-four (24) hours as required by Section 6 of this administrative regulation shall be:

1. Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and

2. If submitted by telephone, followed up by electronic or fax submission to the local health department serving the county in which the patient resides within one (1) business day.

(b) Upon receipt of a report for a disease requiring urgent reporting, the local health department shall:

1. Notify the Kentucky Department for Public Health; and

2. Assist the department in carrying out a public health response.

(c) Weekend, evening, or holiday urgent notification. If local health department personnel cannot be contacted directly, notification shall be made by telephone using an emergency number provided by the local health department or the Kentucky Department for Public Health.

(d) For the protection of patient confidentiality, notification using the emergency number shall include:

1. The name of the condition being reported; and

2. A telephone number that can be used by the department to contact the reporting health professional or health facility.

(3) Priority reporting.

(a) A report made within one (1) business day as required by Section 7, 11, 12(3), 17(4), or 18 of this administrative regulation shall be:

1. Submitted electronically, by fax, or by telephone to the local health department serving the county in which the patient resides; and

2. If submitted by telephone, followed up by electronic or fax submission of a report to the local health department serving the county in which the patient resides within one (1) business day.

(b) Upon receipt of a report for a disease requiring priority reporting, a local health department shall:

1. Investigate the report and carry out public health protection measures; and

2. Notify the Kentucky Department for Public Health of the case by electronic or fax submission within one (1) business day.

(c) The reporting health department may seek assistance in carrying out public health measures from the Kentucky Department for Public Health.

(4) Routine reporting.

(a) A report made within five (5) business days, as required by Section 8, 9, 10, 13(1), 16(1), 17(7), or 20(1) of this administrative regulation, shall be made electronically, by fax, or by mail to the local health department serving the county in which the patient resides.

(b) Upon receipt of a report of a disease or condition requiring routine reporting, a local health department shall:

1. Make a record of the report;

2. Answer inquiries or render assistance regarding the report if requested by the reporting entity; and

3. Forward the report to the Kentucky Department for Public Health by electronic or fax submission of a report, or in writing within five (5) business days.

(5) General reporting. A report made within three (3) months, as required by Section 19 of this administrative regulation, shall be made electronically, by fax, or by mail.

(6) Reporting requirements.

(a) A report submitted by fax or by mail shall be made using one (1) of the following reporting forms:

1. EPID 200, Kentucky Reportable Disease Form;
2. EPID 250, Kentucky Reportable MDRO Form, to be used for priority reporting;
3. EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (aged five (5) years or less);
4. EPID 399, Perinatal Hepatitis B Prevention Form for Infants;
5. Adult HIV Confidential Case Report Form; or
6. Pediatric HIV Confidential Case Report Form.

(b) Case reports may be made electronically through the Kentucky Health Information Exchange. Electronic case reports shall include the information required by paragraph (c) of this subsection.

(c) Information to be reported. Except as provided in subsections (1)(d) and (2)(d) of this section, a report required by this administrative regulation shall include:

1. Patient name;
2. Date of birth;
3. Gender;
4. Race;
5. Ethnicity;
6. Patient address;
7. County of residence;
8. Patient telephone number;
9. Name of the reporting medical provider or facility;
10. Address of the reporting medical provider or facility; and
11. Telephone number of the reporting medical provider or facility.

(d)[(e)] A reporting health professional shall submit the information listed in this subsection and Section 2(1)(f) of this administrative regulation.

Section 6. Notifiable Infectious Conditions Requiring Urgent Notification. (1) Notification of the following diseases shall be considered urgent and shall be made within twenty-four (24) hours:

- (a) Anthrax;
- (b) Botulism;
- (c) Brucellosis (multiple cases, temporally or spatially clustered);
- (d) Diphtheria;
- (e) Hepatitis A, acute;
- (f) Measles;
- (g) Meningococcal infections;
- (h) Middle East Respiratory Syndrome-associated Coronavirus (MERS-CoV) disease;
- (i) Multi-system Inflammatory Syndrome in Children (MIS-C);
- (j) Novel influenza A virus infections;
- (k) Plague;
- (l) Poliomyelitis;
- (m) Rabies, animal;
- (n) Rabies, human;
- (o) Rubella;
- (p) Severe Acute Respiratory Syndrome-associated Coronavirus (SARS-CoV) disease;
- (q) Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19) in accordance with subsection (2) of this section;
- (r) Smallpox;
- (s) Tularemia;
- (t) Viral hemorrhagic fevers due to:
 1. Crimean-Congo Hemorrhagic Fever virus;
 2. Ebola virus;
 3. Lassa virus;
 4. Lujo virus;
 5. Marburg virus; or
 6. New world arenaviruses including:
 - a. Guanarito virus;
 - b. Junin virus;
 - c. Machupo virus; and
 - d. Sabia virus; and
 - (u) Yellow fever.
- (2) To track the spread of Severe Acute Respiratory Syndrome

Coronavirus 2 (SARS-CoV-2), the virus that causes COVID-19, the following reporting is required:

- (a) Laboratory reports of:
 1. Positive and negative test results for SARS-CoV-2 viral detection using [~~antigen or~~]Nucleic Acid Amplification Test (NAAT), including polymerase chain reaction (PCR);
 2. Positive test results for SARS-CoV-2 viral detection using antigen immunoassays; and
 3. SARS-CoV-2 molecular sequencing[; and
 3. Positive test results for IgM or IgG antibodies to SARS-CoV-2 nucleocapsid protein].
- (b) Health professional case report when:
 1. A COVID-19 diagnosis of a patient for whom a laboratory report is not independently submitted;
 2. A COVID-19 diagnosis of a patient is admitted to an inpatient medical facility; or
 3. There is a COVID-19 associated mortality.

Section 7. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Priority Notification. Notification of the following diseases or conditions shall be considered priority and shall be made within one (1) business day:

- (1) Arboviral diseases, neuroinvasive and non-neuroinvasive, including:
 - (a) California serogroup virus diseases, including diseases caused by:
 1. California encephalitis virus;
 2. Jamestown Canyon virus;
 3. Keystone virus;
 4. La Crosse virus;
 5. Snowshoe hare virus; and
 6. Trivittatus viruses;
 - (b) Chikungunya virus disease;
 - (c) Eastern equine encephalitis virus disease;
 - (d) Powassan virus disease;
 - (e) St. Louis encephalitis virus disease;
 - (f) Venezuelan equine encephalitis disease;
 - (g) West Nile virus disease;
 - (h) Western equine encephalitis virus disease; and
 - (i) Zika virus disease or infection or the birth of a child to a mother who was Zika-positive or Zika-inconclusive during any stage of pregnancy or during the periconceptional period;
- (2) Brucellosis (cases not temporally or spatially clustered);
- (3) Campylobacteriosis;
- (4) Carbon monoxide poisoning;
- (5) Cholera;
- (6) Cryptosporidiosis;
- (7) Cyclosporiasis;
- (8) Dengue virus infections;
- (9) Escherichia coli O157:H7;
- (10) Foodborne disease outbreak;
- (11) Giardiasis;
- (12) Haemophilus influenzae invasive disease;
- (13) Hansen's disease (leprosy);
- (14) Hantavirus infection, non-Hantavirus pulmonary syndrome;
- (15) Hantavirus pulmonary syndrome (HPS);
- (16) Hemolytic uremic syndrome (HUS), post-diarrheal;
- (17) Hepatitis B, acute;
- (18) Hepatitis B infection in a pregnant woman;
- (19) Hepatitis B infection in an infant or a child aged five (5) years or less;
- (20) Newborns born to Hepatitis B positive mothers at the time of delivery;
- (21) Influenza-associated mortality;
- (22) Legionellosis;
- (23) Leptospirosis;
- (24) Listeriosis;
- (25) Mumps;
- (26) Norovirus outbreak;
- (27) Pertussis;
- (28) Pesticide-related illness, acute;
- (29) Psittacosis;

- (30) Q fever;
- (31) Rubella, congenital syndrome;
- (32) Salmonellosis;
- (33) Shiga toxin-producing *E. coli* (STEC);
- (34) Shigellosis;
- (35) Streptococcal toxic-shock syndrome;
- (36) *Streptococcus pneumoniae*, invasive disease;
- (37) Tetanus;
- (38) Toxic-shock syndrome (other than Streptococcal);
- (39) Tuberculosis;
- (40) Typhoid fever;
- (41) Varicella;
- (42) Vibriosis; and
- (43) Waterborne disease outbreak.

Section 8. Notifiable Infectious Conditions and Notifiable Non-Infectious Conditions Requiring Routine Notification. Notification of the following diseases shall be considered routine and shall be made within five (5) business days:

- (1) Acute Flaccid Myelitis;
- (2) Anaplasmosis;
- (3) Babesiosis;
- (4) Coccidioidomycosis;
- (5) Creutzfeldt-Jakob disease;
- (6) Ehrlichiosis;
- (7) Hepatitis C, acute;
- (8) Hepatitis C infection in a pregnant woman;
- (9) Hepatitis C infection in an infant or a child aged five (5) years or less;
- (10) Newborns born to Hepatitis C positive mothers at the time of delivery;
- (11) Histoplasmosis;
- (12) Laboratory-confirmed influenza;
- (13) Lead poisoning;
- (14) Lyme Disease;
- (15) Malaria;
- (16) Spotted Fever Rickettsiosis (Rocky Mountain Spotted Fever);
- (17) Toxoplasmosis; and
- (18) Trichinellosis (Trichinosis).

Section 9. Notifiable Infectious Conditions Requiring Routine Notification by Electronic Laboratory Reporting. (1) Notification of the following shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:

- (a) Hepatitis B laboratory test results, which shall:
 - 1. Be reported as positive or negative; and
 - 2. Include the serum bilirubin levels or serum alanine aminotransferase taken within ten (10) days of the test of a patient who has tested positive;
 - (b) Hepatitis C laboratory test results, which shall:
 - 1. Be reported as positive or negative; and
 - 2. Include the serum bilirubin levels or serum alanine aminotransferase taken within ten (10) days of the test of a patient who has tested positive; or
 - (c) Varicella laboratory test results reported as positive for:
 - 1. Isolation of varicella virus from a clinical specimen;
 - 2. Varicella antigen detected by direct fluorescent antibody test; or
 - 3. Varicella-specific nucleic acid detected by polymerase chain reaction (PCR).
- (2) Reports made pursuant to this section shall include a diagnosis.

Section 10. Multi-Drug Resistant Organisms and Other Organisms Requiring Routine Notification by Electronic Laboratory Reporting. (1) Notification of the following diseases shall be considered routine and shall be electronically reported to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) business days:

- (a) *Clostridioides* (formerly *Clostridium*) *difficile* (*C. difficile*)

identified from a positive laboratory test result for *C. difficile* toxin A or B (includes molecular assays {PCR} or toxin assays) or a toxin-producing organism detected by culture or other laboratory means performed on a stool sample;

(b) Enterobacteriaceae species resistant to ceftazidime, ceftriaxone, or cefotaxime;

(c) Methicillin-resistant *Staphylococcus aureus* (MRSA), which includes *S. aureus* cultured from any specimen that tests oxacillin-resistant, ceftoxitin-resistant, or methicillin-resistant by standard susceptibility testing methods, or by a laboratory test that is FDA-approved for MRSA detection from isolated colonies. These methods may also include a positive result by any FDA-approved test for MRSA detection; and

(d) Vancomycin-resistant *Enterococcus* species (VRE), only those identified to the species level, that are resistant to Vancomycin by standard susceptibility testing methods or by results from any FDA-approved test for VRE detection from specific specimen sources.

(2) The report of an organism under this section shall include the:

- (a) Date of specimen collection;
- (b) Source of specimen;
- (c) Susceptibility pattern; and
- (d) Name of the ordering health professional.

(3) Upon a test result performed by a medical laboratory that indicates infection with an agent associated with one (1) or more of the diseases or conditions or a multi-drug resistant organism specified in this section, the director of the medical laboratory shall electronically report the result to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within five (5) days.

(4) The report shall include a diagnosis.

Section 11. Multi-drug Resistant Organisms and Other Organisms Requiring Priority Reporting by EPID 250 and by Electronic Laboratory Reporting to the Kentucky Department for Public Health through the Kentucky Health Information Exchange within One (1) Business Day. Notification of the following diseases shall be considered priority:

(1) *Candida auris* - Laboratory Criteria for Diagnosis shall include:

(a) Confirmatory laboratory evidence for detection of *Candida auris* from any body site using either culture or a culture independent diagnostic test (for example, Polymerase Chain Reaction {PCR}); or

(b) Presumptive laboratory evidence for detection of *Candida haemulonii* from any body site using a yeast identification method that is not able to detect *Candida auris*, and either the isolate or specimen is not available for further testing, or the isolate or specimen has not yet undergone further testing;

(2) Carbapenem-resistant – *Acinetobacter* – Any *Acinetobacter* species testing resistant to imipenem, meropenem, or doripenem, with minimum inhibitory concentration (MIC) value greater than or equal to eight (8) µg/mL by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(3) Carbapenem-resistant Enterobacteriaceae (CRE) – Any Enterobacteriaceae species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to four (4) µg/mL, or ertapenem with MIC value greater than or equal to two (2) µg/mL, by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(4) Carbapenem-resistant – *Pseudomonas* – Any *Pseudomonas* species testing resistant to imipenem, meropenem, or doripenem, with MIC value greater than or equal to eight (8) µg/mL by standard susceptibility testing methods, or by identification of a carbapenemase using a recognized test;

(5) Vancomycin-intermediate *Staphylococcus aureus* (VISA), which includes *S. aureus* cultured from any specimen having a MIC of four (4) to eight (8) µg/mL for vancomycin per standard laboratory methods; and

(6) Vancomycin-resistant *Staphylococcus aureus* (VRSA), which includes *S. aureus* cultured from any specimen having a MIC of greater than or equal to sixteen (16) µg/mL for vancomycin

per standard laboratory methods.

Section 12. Newly Recognized Infectious Agents, HAI Outbreaks, Emerging Pathogens, and Pathogens of Public Health Importance. (1) The following shall be reported immediately by telephone to the Kentucky Department for Public Health:

- (a) A suspected incidence of bioterrorism caused by a biological agent;
- (b) Submission of a specimen to the Kentucky Division of Laboratory Services for select agent identification or select agent confirmation testing; or
- (c) An outbreak of a disease or condition that resulted in multiple hospitalizations or death.

(2) An unexpected pattern of cases, suspected cases, or deaths that could indicate the following shall be reported immediately by telephone to the local health department in the county where the health professional is practicing or where the facility is located:

- (a) A newly-recognized infectious agent;
- (b) An outbreak;
- (c) An emerging pathogen that may pose a danger to the health of the public;
- (d) An epidemic; or
- (e) A noninfectious chemical, biological, or radiological agent.

(3) A report of the following shall be considered priority and shall be reported to the local health department in the county where the health professional is practicing or where the facility is located within one (1) business day:

- (a) Suspected Staphylococcal or other foodborne intoxication; or
 - (b) Salmonellosis or other foodborne or waterborne infection.
- (4) The local health department shall:
- (a) Investigate the outbreak or occurrence;
 - (b) Carry out public health protection measures to address the disease or condition involved; and
 - (c) Make medical and environmental recommendations to prevent future similar outbreaks or occurrences.
- (5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 13. Laboratory Surveillance. (1) Medical or national reference laboratory results for the following shall be considered routine:

- (a) Influenza virus isolates;
- (b) PCR-positive test results for influenza virus; and
- (c) DNA molecular assays for influenza virus.

(2) The report shall include specific laboratory information pertinent to the result.

(3) Upon request by the Kentucky Department for Public Health, a health facility laboratory or a medical laboratory shall report the number of clinical isolates and information regarding the antimicrobial resistance patterns of the clinical isolates at intervals no less frequently than three (3) months for:

- (a) *Acinetobacter baumannii* complex;
- (b) *Enterobacter cloacae* complex;
- (c) *Enterococcus* species;
- (d) *Escherichia coli*;
- (e) *Klebsiella oxytoca*;
- (f) *Klebsiella pneumoniae*;
- (g) *Pseudomonas aeruginosa*;
- (h) *Staphylococcus aureus*; or

(i) An organism specified in a request that includes a justification of its public health importance.

(4) A facility that reports antimicrobial resistance (AR) data to the National Healthcare Safety Network (NHSN) AUR (Antimicrobial Use & Resistance) module shall meet this reporting requirement through NHSN reporting.

Section 14. Healthcare-Associated Infection Surveillance. (1) A health facility in Kentucky that participates in Centers for Medicare and Medicaid Services (CMS) reporting programs shall authorize the CDC to allow the Kentucky Department for Public Health to access health care-associated infection data reported to NHSN.

(2) The Kentucky Department for Public Health shall preserve patient confidentiality and shall not disclose to the public any patient-level data obtained from any health care facility.

(3) The Kentucky Department for Public Health may issue reports to the public regarding healthcare-associated infections in aggregate data form that:

- (a) May identify individual health care facilities; and
- (b) Shall comply with methodology developed by the CDC and CMS for national reporting of health care-associated infections.

(4) The Kentucky Department for Public Health may evaluate healthcare-associated infection data for accuracy and completeness.

Section 15. Antimicrobial Use Reporting. (1) A short-term acute-care hospital in Kentucky that participates in the CMS reporting programs shall report data on facility-wide inpatient antimicrobial use to the Kentucky Department for Public Health, Healthcare-Associated Infection/Antibiotic Resistance (HAI/AR) Prevention Program, on a quarterly basis. Critical access hospitals shall be exempt.

(2) Reporting deadlines shall be consistent with the CMS reporting program submission deadlines of data to the NHSN.

(3) The HAI/AR Prevention Program shall provide the specifications for data submission.

(4) Hospitals shall include aggregated antimicrobial use and patient day data for all inpatient units (facility-wide inpatient) included in the NHSN Laboratory-identified (LabID) MRSA Bacteremia reporting.

(5) The antimicrobial use numerator shall be days of therapy (DOTs) as defined by the NHSN Antimicrobial Use and Resistance (AUR) Module, available at <https://www.cdc.gov/nhsn/pdfs/pscmanual/11pscscurrent.pdf>.

(6) Total DOTs shall be submitted for each of the following antimicrobials:

- (a) Azithromycin;
- (b) Cefepime;
- (c) Ceftazidime;
- (d) Ceftriaxone;
- (e) Ciprofloxacin;
- (f) Clindamycin;
- (g) Daptomycin;
- (h) Ertapenem;
- (i) Imipenem;
- (j) Levofloxacin;
- (k) Linezolid;
- (l) Meropenem;
- (m) Moxifloxacin;
- (n) Piperacillin-tazobactam; and
- (o) Vancomycin.

(7) Total DOTs for the listed drugs shall include only administrations via the intravenous and digestive tract routes.

(8) The denominator for antimicrobial use reporting shall be patient days as defined by the NHSN LabID Module available at https://www.cdc.gov/nhsn/pdfs/pscmanual/12pscscmdro_cdadcurrent.pdf.

(9) A hospital that reports antimicrobial use data to the NHSN AUR Module shall meet this reporting requirement through NHSN reporting.

Section 16. Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) Surveillance. (1) All case reports shall be submitted to the HIV/AIDS Surveillance Program of the Kentucky Department for Public Health, Division of Epidemiology and Health Planning, or its designee, within five (5) business days of diagnosis on one (1) of the following forms:

- (a) Adult HIV Confidential Case Report Form; or
- (b) Pediatric HIV Confidential Case Report Form.

(2) Health professionals and medical laboratories shall report:

(a) A positive test result for HIV, including tests with negative or indeterminate results that are part of a diagnostic testing algorithm whose overall interpretation is positive, and results from:

- 1. Any HIV antibody test;
- 2. Any HIV antigen test;

3. Any HIV Ribonucleic acid (RNA) or Deoxyribonucleic acid (DNA) test;

4. CD4+ assay including absolute CD4+ cell counts and CD4+%;

5. HIV genetic sequencing; or

6. HIV culture; or

(b) A diagnosis of AIDS that meets the definition of AIDS established within the CDC guidelines.

(3) A negative HIV test, if available, shall be submitted with the report required by subsection (2)(a) or (b) of this section.

(4) Any request for data related to HIV infection or AIDS shall be made to the Department for Public Health, Division of Epidemiology and Health Planning.

(5) A case report for a person with an HIV infection without a diagnosis of AIDS, or HIV infection with a diagnosis of AIDS shall include:

(a) The patient's full name;

(b) The patient's complete address;

(c) Date of birth using the format MMDDYYYY;

(d) Gender;

(e) Race;

(f) Ethnicity;

(g) Risk factors as identified by CDC;

(h) County of residence;

(i) Name of provider and facility submitting report including contact information;

(j) Specimens collected;

(k) Date and type of HIV test performed using the format MMDDYYYY;

(l) Results of CD4+ cell counts and CD4+%;

(m) Results of viral load testing;

(n) Results of RNA, DNA, HIV culture, HIV antigen, and HIV antibody, if performed;

(o) Results of TB testing, if available;

(p) Any documented HIV negative test, if available;

(q) History of PrEP or PEP treatment, if available;

(r) Antiretroviral treatment, if available;

(s) HIV status of the person's partner, spouse, or children, as applicable;

(t) Current pregnancy status for females;

(u) Opportunistic infections diagnosed; and

(v) Date of onset of illness.

(6) A report of pregnancy and delivery for a female diagnosed with HIV disease shall include:

(a) All HIV diagnostic testing and results associated with the determination of HIV status of the infant, including tests with negative or indeterminate results that are part of a diagnostic testing algorithm and if final result is negative; and

(b) Any HIV treatment prescribed to an infant.

(7) A report of AIDS shall be made whether or not the patient has been previously reported as having an HIV infection.

(8) If the patient has not been previously reported as having an HIV infection, the AIDS report shall also serve as the report of HIV.

Section 17. Sexually Transmitted Disease (STD). (1) Notification of a probable diagnosis of an STD as specified in subsection (4) or (7) of this section shall be made.

(2) The report shall provide:

(a) Pregnancy status; and

(b) Clinical, epidemiologic, laboratory, and treatment information pertinent to the disease.

(3) Upon a laboratory test result that indicates infection with an agent associated with one (1) or more of the diseases or conditions specified in subsection (4) or (7) of this section, a medical laboratory shall report to the Kentucky Department for Public Health information required by Section 5(6)(c)(b) of this administrative regulation.

(4) Sexually Transmitted Diseases Requiring Priority Notification. A report of the following shall be considered priority and shall be made within one (1) business day:

(a) Each pregnant female who has tested positive for syphilis regardless of stage; or

(b) Syphilis - primary, secondary, or early latent.

(5) Upon receipt of a report for a disease or condition specified in subsection (4) of this section, a local health department shall:

(a) Investigate the report;

(b) Carry out public health protection measures to address the disease or condition; and

(c) Forward the report to the Kentucky Department for Public Health within one (1) business day.

(6) The local health department may seek assistance from the Kentucky Department for Public Health.

(7) Sexually Transmitted Diseases Requiring Routine Notification. A report of the following shall be considered routine and shall be made within five (5) business days:

(a) Chancroid;

(b) Chlamydia trachomatis infection;

(c) Gonorrhea;

(d) Granuloma inguinale;

(e) Lymphogranuloma venereum; or

(f) Syphilis, other than primary, secondary, early latent, or congenital.

(8) Upon receipt of a report for a disease or condition specified in subsection (7) of this section, a local health department shall:

(a) Make a record of the report using Form EPID 200, Kentucky Reportable Disease Form;

(b) Forward the report to the Kentucky Department for Public Health within five (5) business days; and

(c) Render assistance if requested by the reporting entity or the Kentucky Department for Public Health.

Section 18. Tuberculosis. (1) A pharmacist shall give notice if two (2) or more of the following medications used for the initial treatment of active tuberculosis are dispensed to an inpatient in a health facility or to an ambulatory patient in a health facility or a pharmacy:

(a) Ethambutol;

(b) Isoniazid;

(c) Pyrazinamide; and

(d) Rifampin or rifabutin.

(2)(a) A report of tuberculosis shall be considered priority and shall be reported to the local health department serving the county in which the patient resides.

(b) If the local health department cannot be reached, notification shall be given to the Kentucky Department for Public Health.

(3) The report shall include:

(a) Information required in Section 5(6)(c)(b) of this administrative regulation; and

(b) Names of the medications dispensed.

Section 19. Asbestosis, Coal Worker's Pneumoconiosis, and Silicosis. (1) A health professional shall report a diagnosis of the following to the Kentucky Department for Public Health within three (3) months of diagnosis:

(a) Asbestosis;

(b) Coal worker's pneumoconiosis; or

(c) Silicosis.

(2) A report required under this section shall include the information required in Section 5(6)(c)(b).

Section 20. Reporting of Communicable Diseases in Animals. (1) A diagnosis in an animal of a condition known to be communicable to humans, except for rabies, shall require routine notification.

(2) A veterinarian shall report the diagnosis within five (5) business days to the local health department serving the county in which the animal is located.

(3) If a laboratory test indicates infection of an animal with an agent associated with a condition known to be communicable to humans, the director of a medical laboratory shall report the result to the local health department serving the county in which the animal is located within five (5) business days.

(4) The local health department receiving the report shall:

(a) Investigate the report;

(b) Carry out public health protection measures for the control

of communicable diseases; and

(c) Forward the report to the Kentucky Department for Public Health within five (5) business days.

(5) The local health department may seek assistance from the Kentucky Department for Public Health.

Section 21. Kentucky Public Health Advisory. (1) If the secretary of the Cabinet for Health and Family Services or the commissioner of the Department for Public Health determines that a disease not presently listed in this administrative regulation requires reporting, the secretary or commissioner shall issue a Kentucky public health advisory.

(2) The Kentucky public health advisory shall include:

- (a) Date and time the advisory is issued;
- (b) A unique number to identify the advisory;
- (c) Names for the disease or condition;
- (d) A description of the disease or condition;
- (e) Recommendations for health professionals, health facilities, and laboratories; and

(f) Notification requirements including:

- 1. The notification time interval; and
- 2. Methods for notification.

(3) The duty to report by health professionals, health facilities, and laboratories pursuant to a Kentucky public health advisory shall begin upon receipt of the advisory and shall remain in effect until the advisory is rescinded by order of the secretary or the commissioner.

Section 22. Penalty. If the cabinet has cause to believe that a physician willfully neglects or refuses to notify the cabinet in accordance with this administrative regulation, pursuant to KRS 214.990(1) the cabinet shall make a referral to the appropriate professional licensing board.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "EPID 200, Kentucky Reportable Disease Form", 4/2020;
- (b) "EPID 250, Kentucky Reportable MDRO Form", 10/2020;
- (c) "EPID 394, Kentucky Reportable Disease Form, Hepatitis Infection in Pregnant Women or Child (aged five (5) years or less)", 9/2020;
- (d) "EPID 399, Perinatal Hepatitis B Prevention Form for Infants", 6/2020;
- (e) "Adult HIV Confidential Case Report Form", 11/2019; and
- (f) "Pediatric HIV Confidential Case Report Form", 11/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and available online at <https://chfs.ky.gov/agencies/dph/dehp/idb/Pages/default.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 25, 2022

FILED WITH LRC: April 26, 2022 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 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 July 18, 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 July 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: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes notification standards and specifies the diseases requiring immediate, urgent, priority, routine, or general notification, in order to facilitate rapid public health action to control diseases, and to permit an accurate assessment of the health status of the commonwealth.

(b) The necessity of this administrative regulation: KRS 211.180(1) requires the cabinet to implement and maintain a statewide program for the detection, prevention, and control of reportable diseases. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation delineates which diseases are reportable including the urgency of the notification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow clinicians including every physician, advanced practice registered nurse, and head of family to notify the local health department of the existence of the diseases specified in the administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation removes the requirement for healthcare facilities to submit a negative COVID-19 antigen test results, removes the requirement for reporting COVID-19 antibody test results, and allows for the submission of electronic case reporting through the Kentucky Health Information Exchange.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to provide relief of the administrative burden for healthcare facilities due to changes for COVID-19 case reporting requirements issued by the Secretary of the Department for Health and Human Services, and to allow healthcare facilities to utilize electronic case reporting in lieu of submitting a faxed or mailed paper form.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.180(1) requires the cabinet to implement and maintain a statewide program for the detection, prevention, and control of reportable diseases. KRS 214.010 requires every physician, advanced practice registered nurse, and every head of family to notify the local health department of the existence of diseases and conditions designated by administrative regulation of the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation provides relief of the administrative burden for healthcare providers by eliminating the requirement to report negative COVID-19 antigen test results and will allow healthcare facilities to submit case reports electronically which will provide for a better response time for case investigation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected by this administrative regulation include all health facilities as defined by KRS 216B.015(13), health professionals licensed under KRS

Chapters 311 through 314, medical laboratories as defined by KRS 333.020(3), national reference laboratories contracted by Kentucky health professionals, laboratories, or healthcare facilities, pharmacists licensed under KRS Chapter 315, and veterinarians licensed under KRS Chapter 321.

(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: Healthcare facilities will need to be aware of the change in COVID-19 reporting requirements and will need to determine if they begin using the Kentucky Health Information Exchange for case reporting.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The costs associated with compliance is unknown. Healthcare facilities and physicians already report communicable diseases.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the benefits of the timely and appropriate prevention and control of communicable diseases will be afforded to all citizens of the commonwealth.

(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 are no initial costs.

(b) On a continuing basis: There is no increase in ongoing costs associated with the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The reportable disease programs affected by this administrative regulation are funded through a mix of state general fund dollars, federal dollars, and specialized grants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This emergency administrative regulation does not contain fees.

(9) TIERING: Is tiering applied? Tiering is not applied. While the list of reportable diseases and conditions is separated by immediate, urgent, priority, routine, or general notification, all healthcare facilities and physicians are required to report any known communicable disease.

FISCAL NOTE

(1) What 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 emergency administrative regulation impacts the Division of Epidemiology and Health Planning, as well as all local health departments.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.090(3), 211.180(1), and 214.010.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? There are no increased costs to administer this program in the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will result in cost savings for those health care facilities that elect to utilize the Kentucky Health Information Exchange for submission.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will result in cost savings for those health care facilities that elect to utilize the Kentucky Health Information Exchange for submission.

(c) How much will it cost the regulated entities for the first year? There will be no costs to the regulated entities.

(d) How much will it cost the regulated entities for subsequent years? There will be no costs to the regulated entities.

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

Cost Savings (+/-): This administrative regulation will result in cost savings for those health care facilities that elect to utilize the Kentucky Health Information Exchange for submission.

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation will not have a major economic impact on the regulated entities or state or local governments.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Laboratory Services
(Amendment)

902 KAR 4:030. Newborn screening program.

RELATES TO: KRS 194A.050, 211.090, 211.180(1), 214.155
STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 214.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.155 requires the Cabinet for Health and Family Services to operate a newborn screening program for inborn errors of metabolism and other inherited and congenital disorders and conditions, and to establish a schedule of fees to cover the actual costs to the cabinet for the program. This administrative regulation requires that infants be tested for inborn errors of metabolism and other inherited and congenital disorders and conditions as specified in KRS 214.155, and establishes the schedule of fees to cover actual costs of the newborn screening program. The selection of screened conditions is based upon the recommended uniform screening panel as authored by the American College of Medical Genetics and commissioned by the Health Resources and Services Administration, U.S. Department of Health and Human Services.

Section 1. Definitions. (1) "Blood spot testing" means laboratory testing that is performed on newborn infants to detect a wide variety of inherited and congenital disorders and conditions by using a laboratory-authorized filter paper specimen card.

(2) "Critical congenital heart disease" or "CCHD" means an abnormality in the structure or function of the heart that exists at birth and places an infant at significant risk of disability or death if not diagnosed and treated soon after birth.

(3) "Diagnostic echocardiogram" means a test that uses ultrasound to provide an image of the heart that is performed by a technician trained to perform pediatric echocardiograms.

(4) "Laboratory" means the Division of Laboratory Services within the Cabinet for Health and Family Services, Department for Public Health.

(5) "Pediatric cardiologist" means a pediatrician that is board-certified to provide pediatric cardiology care.

(6) "Program" means the Newborn Screening Program for inherited and congenital disorders and conditions operated by the Cabinet for Health and Family Services, Department for Public Health.

(7) "Pulse oximetry testing" means a noninvasive test that estimates the percentage of hemoglobin in blood that is saturated with oxygen.

(8) "Submitter" means a hospital, primary care provider, health department, birthing center, laboratory, or midwife submitting an infant's blood specimen for the purpose of newborn screening.

Section 2. Tests for inborn errors of metabolism or other inherited or congenital disorders and conditions for newborn infants as part of newborn screening shall be consistent with the U.S. Department of Health and Human Services' Recommended Uniform Screening Panel and include the following:

- (1) 2-Methyl-3-hydroxybutyric aciduria (2M3HBA);
- (2) 2-Methylbutyryl-CoA dehydrogenase deficiency (2MBDH);
- (3) 3-Methylcrotonyl-CoA carboxylase deficiency (3MCC);
- (4) 3-Methylglutaconic aciduria (3MGA);
- (5) 3-Hydroxy 3-Methylglutaric aciduria (HMG);
- (6) Argininemia (ARG);
- (7) Argininosuccinic acidemia (ASA);
- (8) Beta-ketothiolase deficiency (BKT);
- (9) Biotinidase disorder (BIOT);
- (10) Carnitine acylcarnitine translocase deficiency (CACT);
- (11) Carnitine palmitoyltransferase deficiency I (CPT-I);
- (12) Carnitine palmitoyltransferase deficiency II (CPT-II);
- (13) Carnitine uptake defect (CUD);
- (14) Citrullinemia type I (CIT-I);
- (15) Citrullinemia type II (CIT-II);
- (16) Congenital adrenal hyperplasia (CAH);
- (17) Congenital hypothyroidism (CH);
- (18) Critical congenital heart disease (CCHD);
- (19) Cystic fibrosis (CF);
- (20) Ethylmalonic encephalopathy (EE);
- (21) Galactosemia (GAL);
- (22) Glutaric acidemia type I (GA I);
- (23) Glutaric acidemia type II (GA-II);
- (24) Glycogen storage disease type II (GSD-II, Pompe Disease);
- (25) Homocystinuria (HCY);
- (26) Hypermethioninemia (MET);
- (27) Hyperphenylalaninemia (H-PHE);
- (28) Isobutyryl-CoA dehydrogenase deficiency (IBG);
- (29) Isovaleric acidemia (IVA);
- (30) Long-chain hydroxyacyl-CoA dehydrogenase deficiency (LCHAD);
- (31) Malonic acidemia (MAL);
- (32) Maple syrup urine disease (MSUD);
- (33) Medium-chain acyl-CoA dehydrogenase deficiency (MCAD);
- (34) Methylmalonic acidemia (Cbl A,B);
- (35) Methylmalonic acidemia (Cbl C,D);
- (36) Methylmalonic acidemia mutase deficiency (MUT);
- (37) Mucopolysaccharidosis type I (MPS-I, Hurler's Disease);
- (38) Multiple carboxylase deficiency (MCD);

- (39) Non-ketotic Hyperglycinemia (NKHG);
- (40) Phenylketonuria (PKU);
- (41) Propionic acidemia (PA);
- (42) Severe combined immunodeficiency (SCID);
- (43) Short-chain acyl-CoA dehydrogenase deficiency (SCAD);
- (44) Sickle cell disease (Hb S/S);
- (45) Sickle cell hemoglobin C disease (Hb S/C);
- (46) Sickle cell S Beta Thalassemia (Hb S/Th);
- (47) Spinal muscular atrophy (SMA);
- (48) Trifunctional protein deficiency (TFP);
- (49) Tyrosinemia type I (TYR-I);
- (50) Tyrosinemia type II (TYR-II);
- (51) Tyrosinemia type III (TYR-III);
- (52) Various Hemoglobinopathies (includes Hb E);
- (53) Very long-chain acyl-CoA deficiency (VLCAD); and
- (54) X-linked adrenoleukodystrophy (X-ALD).

Section 3. Tests for inborn errors of metabolism or other inherited or congenital disorders and conditions for newborn infants as part of newborn screening shall include the following disorder that is not recommended by the U.S. Department of Health and Human Services, but is required by Kentucky law: Krabbe Disease (KD).

Section 4. Submitter Responsibilities. (1) Except as provided in KRS 214.155(3) and (5), the administrative officer or other person in charge of the hospital or institution caring for newborn infants and the attending primary care provider or midwife shall administer to, or verify administration of tests to, every infant in its care prior to hospital discharge:

(a) A blood spot test to detect inborn errors of metabolism and other inherited and congenital disorders and conditions identified in Sections 2 and 3 of this administrative regulation; and

(b) Pulse oximetry testing to detect critical congenital heart disease.

(2) If a baby is not born in a hospital or institution, the attending primary care provider or midwife shall ensure that both tests required by subsection (1) of this section are:

(a) Administered between twenty-four (24) and forty-eight (48) hours of age;

(b) Acted upon if abnormal; and

(c) Reported to the program by fax or by the cabinet's web-based system.

(3) A capillary blood spot specimen shall be obtained from a newborn infant not requiring an extended stay due to illness or prematurity between twenty-four (24) and forty-eight (48) hours of age.

(4) If the infant is to remain in the hospital due to illness or prematurity, the hospital shall obtain the capillary blood spot specimen from that infant after twenty-four (24) and before seventy-two (72) hours of age.

(5) Except as provided by subsection (6) of this section, the pulse oximetry testing shall be performed when the infant is twenty-four (24) hours of age or older and shall occur prior to discharge.

(6) If the infant is discharged prior to twenty-four (24) hours of age, the blood spot and pulse oximetry testing shall be performed as close to twenty-four (24) hours of age as possible.

(7) If an infant is transferred from the birth hospital to another hospital during the newborn hospital stay, the requirements established in this subsection shall apply.

(a) The sending hospital shall obtain the capillary blood spot specimen for the newborn screening blood test and the pulse oximetry testing for CCHD if the infant is twenty-four (24) hours of age or more when the infant is transferred to another hospital.

(b) The receiving hospital shall ensure the newborn screening blood spot test and the pulse oximetry testing are performed if the infant is less than twenty-four (24) hours of age when the infant is transferred.

(8) If an infant expires before the newborn screening blood spot test and pulse oximetry test have been performed, the program shall be notified within five (5) calendar days.

(9) If the information on the filter paper specimen card obtained

by the submitter and sent to the laboratory is incomplete or inadequate, then the submitter, upon request of the program, shall:

(a) Attempt to locate the infant and obtain a complete and adequate specimen within ten (10) days; and

(b) Report to the program a specimen that is unable to be obtained within ten (10) days.

(10) A submitter that is responsible for the collection of the initial blood spot specimen and pulse oximetry testing for newborn screening shall:

(a) Provide to an infant's parent or guardian educational materials regarding newborn screening and pulse oximetry testing;

(b) Designate a newborn screening coordinator and physician responsible for the coordination of the facility's newborn screening compliance by having a newborn screening protocol;

(c) Notify the program of the name of the individuals designated in paragraph (b) of this subsection each year in January and if the designated individual changes; and

(d) Develop a written protocol for tracking newborn screening compliance, which shall:

1. Be submitted to the program each year in January; and

2. Include, at a minimum:

a. A requirement that the name of the primary care provider that will be attending the infant after birth or discharge or, if known, the primary care provider who will be caring for the infant after discharge, shall be placed on the filter paper specimen card sent with the initial blood spot specimen to the laboratory. If the infant is in the neonatal intensive care unit, the name of the attending neonatologist may be placed on the filter specimen card sent with the initial blood spot specimen to the laboratory;

b. Verification that:

(i) Each infant born at that facility has had a specimen obtained for newborn screening and pulse oximetry testing on or before discharge;

(ii) All information on the specimen card has been thoroughly completed; and

(iii) The specimen has been submitted appropriately;

c. A process to ensure that final results of the pulse oximetry screening are entered into the cabinet's web-based system; and

d. A procedure to assure the hospital or facility that identifies that an infant has not had a specimen obtained for newborn screening and pulse oximetry testing prior to discharge shall:

(i) Notify the program;

(ii) Use every reasonable effort to locate the infant;

(iii) Notify the parent or guardian and the primary care provider immediately; and

(iv) Recommend that the infant present to the hospital or primary care provider immediately for a newborn screening blood spot specimen and pulse oximetry testing.

(11) A hospital or facility shall report each written refusal, in accordance with KRS 214.155(5), to the program within five (5) calendar days.

Section 5. Blood Specimen Collection. (1) A capillary blood spot specimen required by Section 4 of this administrative regulation shall be obtained by a heel stick.

(2) Blood from the heel stick shall be applied directly to the filter paper specimen card.

(3) All circles shall be saturated completely using a drop of blood per circle on a filter paper specimen card.

(4) The specimen collector shall provide, on the filter paper specimen card, information requested by the laboratory.

(5) The capillary blood spot specimen shall be air dried for three (3) hours and then shall be mailed or sent to the laboratory:

(a) Within twenty-four (24) hours of collection of the specimen;

or

(b) The next business day in which mail or delivery service is available.

(6) A submitter sending a blood spot specimen via regular mail services shall send the specimen to the following address: Cabinet for Health and Family Services, Department for Public Health, Division of Laboratory Services, 100 Sower Boulevard, Frankfort, Kentucky 40602.

(7) A submitter sending a blood spot specimen via expedited

mail services shall ensure the specimen is sent to the following address: Cabinet for Health and Family Services, Department for Public Health, Division of Laboratory Services, 100 Sower Boulevard, Suite 204, Frankfort, Kentucky 40602.

(8) Specimens processed or tracked under the newborn screening program shall be limited to specimens on infants less than six (6) months of age.

Section 6. Unsatisfactory or Inadequate Blood Specimen. (1) If a specimen is unsatisfactory or inadequate to produce a valid result, the laboratory shall notify the submitter and the parent on the filter paper specimen card that the newborn screen needs to be repeated as soon as possible.

(2) If a requested repeat specimen has not been received within ten (10) business days from the date the repeat request was issued, the program shall notify the parent by mail of the need for a repeat screening test.

Section 7. Special Circumstances - Blood Transfusion. If a newborn infant requires a blood transfusion, the requirements for newborn screening established in this section shall apply.

(1) The hospital shall obtain a capillary blood spot specimen for newborn screening prior to the infant being transfused, except in an emergency situation.

(2) If the pre-transfusion blood spot specimen was obtained before twenty-four (24) hours of age, or if it was not obtained due to an emergency situation, then the hospital or primary care provider shall use all reasonable efforts to obtain a repeat capillary blood specimen from the transfused infant and submit it to the laboratory according to the following schedule:

(a) Seventy-two (72) hours after the last blood transfusion, rescreen for inborn errors of metabolism and inherited and congenital disorders and conditions listed in Sections 2 and 3 of this administrative regulation; and

(b) Ninety (90) days after the last blood transfusion, rescreen for any disorder that relies on red blood cell analysis such as hemoglobinopathies, galactosemia, and biotinidase deficiency.

Section 8. Reporting Results of Newborn Screening Blood Tests. (1) Normal Results. Upon receipt of a normal lab result, the laboratory shall ~~send[mail]~~ the result to the primary care provider and the submitter.

(2) Abnormal Results.

(a) The laboratory shall report abnormal, presumptive positive, or equivocal results of tests for inborn errors of metabolism, inherited and congenital disorders and conditions to the program.

(b) The submitter and primary care provider shall receive a copy of all abnormal, presumptive positive, and equivocal results ~~[by-mail]~~.

(c) In addition~~[to receiving mailed results]~~, a primary care provider shall be notified of an abnormal, presumptive positive, or equivocal result in the manner established in this paragraph.

1. Upon receipt of an abnormal, equivocal, or a presumptive positive lab result, the laboratory shall notify the primary care provider listed on the filter paper specimen card within two (2) business days of the result and the need for follow-up testing.

2. Upon receipt of a presumptive positive lab result, the program shall notify the primary care provider listed on the filter paper specimen card of the result and recommend immediate consultation with a university pediatric specialist.

3. If the program is unable to determine the infant's primary care provider to notify them of an abnormal, presumptive positive, or equivocal result and the need for follow-up, the program shall use every available means to notify the infant's parent.

(d) The Cabinet for Health and Family Services shall share pertinent test results with a state university-based specialty clinic or primary care provider who informs the cabinet they are treating the infant who received the test.

(e) The cabinet may share pertinent test results with the local health department in the infant's county of residence that conducts newborn screening follow-up activities.

(f) A specialty clinic or primary care provider shall report results of diagnostic testing to the program within thirty (30) days or earlier

upon request.

(g) If a requested repeat specimen has not been received within ten (10) business days from the date the repeat request was issued, the program shall notify the parent by mail of the need for a repeat screening test.

Section 9. Pulse Oximetry Screening for Critical Congenital Heart Disease. Pulse oximetry screening for critical congenital heart defects required by Section 2 of this administrative regulation shall be consistent with the standard of care according to national recommendations by the American Academy of Pediatrics.

Section 10. Pulse Oximetry Screening Process. (1) Except as provided by KRS 214.155(3) and subsections (2) and (4) of this section, pulse oximetry testing shall be performed when the infant is between twenty-four (24) and forty-eight (48) hours of age and shall occur no later than the day of discharge.

(2) If the infant is discharged prior to twenty-four (24) hours of age, the blood spot and pulse oximetry testing shall be performed as close to twenty-four (24) hours of age as possible.

(3) An infant in a neonatal intensive care unit shall be screened when medically appropriate after twenty-four (24) hours of age but prior to discharge.

(4) An infant who has been identified with critical congenital heart disease prior to birth or prior to twenty-four (24) hours of age shall be exempt from the pulse oximetry screening process.

(5) Pulse oximetry screening shall be performed by placing pediatric pulse oximetry sensors simultaneously on the infant's right hand and either foot to obtain oxygen saturation results.

(6) If using a single pediatric pulse oximetry sensor, pulse oximetry screening shall be performed on the infant's right hand and either foot, one after the other, to obtain oxygen saturation results.

Section 11. Pulse Oximetry Testing Results. (1) A passed result shall not require further action if:

(a) The pulse oximetry reading in both extremities is greater than or equal to ninety-five (95) percent; and

(b) The difference between the readings of both the upper and lower extremity is less than or equal to three (3) percent.

(2)(a) A pending result shall:

1. Occur if:

a. The pulse oximetry reading is between ninety (90) and ninety-four (94) percent; or

b. The difference between the readings of both the upper and lower extremity is greater than three (3) percent; and

2. Be repeated using the pulse oximetry screening in one (1) hour.

(b) If a repeated pulse oximetry screen is also interpreted as pending, it shall be performed again in one (1) hour.

(c) If the pulse oximetry result on the third screen continues to meet the criteria as pending after three (3) screenings have been performed, it shall be considered failed and the procedures established in subsection (3) of this section shall be followed.

(3) A failed result shall:

(a) Occur if:

1. The initial pulse oximetry reading is less than ninety (90) percent in the upper or lower extremity; or

2. The provisions of subsection (2)(c) of this section apply; and

(b) Require the following actions:

1. The primary care provider shall be notified immediately;

2. The infant shall be evaluated for the cause of the low saturation reading; and

3. If CCHD cannot be ruled out as the cause of the low saturation reading, the attending physician or advanced practice registered nurse shall:

a. Order a diagnostic echocardiogram to be performed without delay;

b. Ensure the diagnostic echocardiogram be interpreted as soon as possible; and

c. If the diagnostic echocardiogram results are abnormal, obtain a consultation with a pediatric cardiologist prior to hospital discharge.

Section 12. Reporting Results of Pulse Oximetry Screening. (1) Final results of the pulse oximetry screening shall be entered into the cabinet's web-based system.

(2) A failed result shall be immediately reported to the program by fax or by the cabinet's web-based system.

Section 13. Newborn Screening Fees. (1) A submitter obtaining and sending a blood spot specimen to the laboratory shall be billed a fee of \$150 for the initial newborn screening test.

(2) A submitter obtaining and sending a repeat blood spot specimen to the laboratory shall not be charged an additional fee.

(3) Fees due the Cabinet for Health and Family Services shall be collected through a monthly billing system.

STEVEN J. STACK, MD, MBA, COMMISSIONER

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 25, 2022

FILED WITH LRC: May 4, 2022 at 12:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 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 July 18, 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 July 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: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires infants be tested for inborn errors of metabolism, other inherited and congenital disorders and conditions as specified in KRS 214.155, and establishes the fee amount to cover the actual costs of the newborn screening program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all newborns are screened for heritable and congenital disorders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 214.155 requires the Cabinet for Health and Family Services to operate a newborn screening program for inborn errors of metabolism and other inherited and congenital disorders and conditions, and to establish a schedule of fees to cover the actual costs to the cabinet for the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the identification of newborns who have inborn errors of metabolism and other inherited and congenital disorders and conditions.

(2) If 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 the requirement the testing results be mailed to the hospital that submitted the test and the primary care provider.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to remove the requirement for newborn screening test results to be mailed to the submitter and primary care physician.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 214.155 authorizes the secretary to prescribe by administrative regulation the manner of procedures, testing specimens, and recording and reporting the results of newborn screening test.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will allow primary care physicians to receive the test results through electronic medical record or other electronic notification. This will reduce the time between newborn screening test completion and providing the results.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact approximately 550 primary care physicians and hospitals.

(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: Facilities submitting tests and primary care physicians that wish to receive results through electronic methods will need to provide a facsimile number or access the results through an electronic medical record or secured means. However, results can still be mailed directly to the facility or primary care physician if that is the preferred method for receiving the report.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Receiving newborn screening results through electronic methods will not result in a cost to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Facilities submitting tests and primary care physicians will receive newborn screening test results in a more timely manner. This will allow for quicker follow up with the family.

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

(a) Initially: The total costs of the newborn screening program is \$7,691,000.

(b) On a continuing basis: Assuming program operations continue as they are, there is no anticipated increase in costs on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and fees collected from submitters are used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The fee established in this administrative regulation is not changing at this time.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation impacts all affected 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? This administrative regulation impacts the Division of Maternal and Child Health and

the Division of Laboratory Services within the Department for Public Health.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 211.090(3), and 214.155.

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

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

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

(c) How much will it cost to administer this program for the first year? The current cost of the newborn screening program is \$7,691,000.

(d) How much will it cost to administer this program for subsequent years? The ongoing costs to administer the newborn screening program is \$7,691,000.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will generate minor costs savings the first year. The change from requiring screening results to be mailed will reduce the amount of postage costs associated with the newborn screening program.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will generate minor costs savings in subsequent years. The change from requiring screening results to be mailed will reduce the amount of postage costs associated with the newborn screening program.

(c) How much will it cost the regulated entities for the first year? There will be minor costs to the regulated entities the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be minor costs to the regulated entities in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)

902 KAR 8:060. Salary adjustments for local health departments.

RELATES TO: KRS 211.170(1), (2), 211.1751, 211.1752, 211.1755, 212.170, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation establishes the policies and procedures regarding salary adjustments for local health departments.

Section 1. Salary Upon Appointment. (1) The entrance salary of an employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed, unless otherwise approved by the department, based on the criteria established in subsections (2) and (3) of this section.

(2)(a) Prior to the start date of a new employee, and upon approval by the department, a new minimum entrance salary may be established by an agency if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary.

(b) If an appointment is made at the newly established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly established minimum entrance salary.

(c)1. If a new minimum entrance salary is established by an agency for a specified class, in addition to the adjustment required by subsection (3) of this section, based on documented recruitment needs, or a new entrance salary is established by a compensation plan change, the department may approve a salary adjustment for employees in the same class.

2. The adjustment shall be a fixed amount provided to each employee in the classification and shall not exceed the amount of increase applied to the newly established minimum.

3. In fixing salaries for this adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(3)(a) An appointment of an applicant who meets the minimum requirements for a position may be above minimum salary within the salary range applicable to the class, if:

1. The newly appointed employee has previous, relevant experience above the minimum requirements of the job;

2. It is necessary to attract qualified applicants; and

3. The newly appointed employee's hire rate does not exceed the salary of a present employee in the same classification with the comparable years of relevant experience, education, and training.

(b) If the individual possesses qualifications in training and experience in addition to the minimum requirements for the class, the newly appointed employee may receive a two (2) percent salary adjustment, not to exceed the midpoint, for each year of appropriate experience and education or training in excess of the minimum requirements for the respective classification.

(c) An employee possessing the same qualifications, in the same class of positions, in the same agency, and who is paid below the entrance salary level as adjusted for the newly appointed employee, shall have his or her salary adjusted to the approved entrance salary level.

Section 2. Initial Probationary Salary Adjustment. (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period as specified in 902 KAR 8:080 Section 9(2). The salary adjustment shall take effect the first pay

period following completion of the probationary period.

(2) Except as provided for in 902 KAR 8:080, Section 3(2)(a), an employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

Section 3. In-Range Salary Adjustment. (1) An appointing authority may request a salary adjustment not to exceed five (5) percent if an employee is assigned permanent job duties and responsibilities ~~that~~~~which~~ are more complex and difficult than current job duties and grade level, but are less than those indicated through a reclassification.

(2) Only one (1) in-range salary adjustment shall be allowed for an employee per classification.

(3) The appointing authority may request to remove the in-range salary adjustment if the in-range duties are removed. The salary shall revert to the previous amount prior to the in-range adjustment.

Section 4. Reclassification. (1) A position shall be reclassified if the duties and responsibilities of a position have materially changed.

(2) An agency ~~[based on an evaluation of a position,]~~ may request a reclassification of a regular status employee to a different position:

(a) Within the same classification series that has more complex nonsupervisory job duties and responsibilities and has a higher grade level; or

~~(b) [That has supervisory responsibilities and a higher grade level; or~~

~~(e)] In a different classification series that has the same or higher grade level.~~

(3) A regular status employee to be reclassified shall:

(a) Meet the minimum requirements of the new classification; and

(b) Have not previously performed the primary duties of the new classification.

(4) An employee that is reclassified with or without probation to a position having a higher pay grade shall receive a salary increase that is the higher of:

(a) Five (5) percent of the employee's current salary;

(b) Three (3) percent for each grade increase to the new position not to exceed ten (10) percent; or

(c) The minimum salary of the grade assigned to the new position.

~~(5) A reclassified employee shall~~ ~~and~~

~~(e) serve a probationary period of thirteen (13) pay periods if the reclassification is to a supervisory position or a different classification series within the same grade. If the employee has performed satisfactorily, as determined by the employee's supervisor, the employee shall receive a three (3) percent salary increase at the end of the probationary period.~~

~~[(4) An employee that is reclassified with or without probation to a position having a higher pay grade shall receive a salary increase that is the higher of:~~

~~(a) Five (5) percent of the employee's current salary;~~

~~(b) Three (3) percent for each grade increase to the new position not to exceed ten (10) percent; or~~

~~(c) The minimum salary of the grade assigned to new position.]~~

Section 5. Promotion of an Employee to a Vacant Position. (1) An employee may be promoted upon the request of an appointing authority if the employee meets the minimum requirements of the vacant position having a higher salary determined by the department to have more extensive and complex job duties and responsibilities.

(2) An employee who is advanced to a higher pay grade through a promotion shall receive a salary increase that is the higher of:

(a) Five (5) percent;

(b) Three (3) percent for each grade increase to the new position not to exceed ten (10) percent; or

(c) The minimum salary of the new position.

(3)(a) The employee shall serve a promotional probationary period of thirteen (13) pay periods and, except as provided by paragraph (b) of this subsection, shall receive a three (3) percent salary increase following satisfactory completion of the probationary period, as documented by the performance evaluation;

(b) If the employee was promoted while serving an initial probation, the employee shall receive a five (5) percent increment in salary instead of a three (3) percent increase.

Section 6. Demotion. If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(1) If an employee requests a voluntary demotion:

(a)1. The employee's salary shall be reduced by five (5) percent for one grade; or

2. For multiple grades, three (3) percent for each grade decrease not to exceed ten (10) percent; and

(b) The employee's salary shall be reduced by an additional three (3) percent if the voluntary demotion is to a position that no longer requires supervisory responsibilities;

(2) If the demotion is due to reorganization by the agency, the employee may retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, and funding is sufficient, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files; or

(3) The salary of an employee who is demoted because of a documented disciplinary problem or inability to perform a duty or responsibility required of the position shall be reduced by ten (10) percent of their current salary or to the minimum of the new grade.

(4) The salary of an employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall be reduced to the level prior to promotion.

Section 7. Salary Upon Reinstatement of a Former Employee.

(1) A former employee may be reinstated to a position for which the employee was previously employed.

(2) The salary of an employee that is reinstated shall be at the higher of:

(a) The same pay rate the employee had been paid at the termination of service, if the time period between separation and reinstatement does not exceed three (3) years;

(b) The current established minimum entrance salary above the former salary; or

(c) Compensation plan changes.

Section 8. Salary Upon Re-employment. (1) A former employee may be re-employed to a position for which the employee was previously employed up to one (1) year after separation.

(2) The salary of an employee that is re-employed shall be:

(a) At the same pay rate the employee had been paid at the termination of service, if the period between separation and re-employment does not exceed one (1) year; or

(b) In accordance with Section 6(1) of this administrative regulation if re-employed to a lower classification.

Section 9. Lump Sum Merit Payment. (1) The appointing authority, with the approval of the department, may award a regular, full-time, part-time 100 hour, or part-time employee a merit lump sum payment.

(2) The appointing authority may grant a lump sum merit payment to an employee meeting the eligibility criteria of this section in an amount not to exceed eight (8) percent of the employee's current salary or established minimum of the employee's classification grade during the annual evaluation period of twenty-six (26) pay periods.

(3) A lump sum merit payment may be granted by the appointing authority with the approval of the department, to an employee meeting the following eligibility criteria:

(a) The employee has completed the initial probationary period required on appointment; and

(b)1. The employee's job performance is consistently above what is normally expected or required by the job duties and responsibilities; or

2. The employee has successfully completed a special project of significant importance to warrant special attention.

(4) The appointing authority shall prepare and submit written documentation to the department that shall substantiate that the employee satisfies the eligibility criteria in this section for the lump sum merit payment to be effective.

(5) The appointing authority shall inform the Board of Health the number of lump sum merit payments granted during the fiscal year that exceed \$2,000 per payment unless the payment is based on the 902 KAR 8:096 annual evaluation.

(6) An agency may grant a one (1) time lump sum merit payment across the board during the fiscal year to all regular status employees in recognition of the agency exceeding expectations.

(a) The flat amount per employee shall not exceed \$1,000; and

(b) The appointing authority shall receive prior approval from the Board of Health and the department.

Section 10. Detail to Special Duty. (1) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to:

(a) Occupy a position and assume the job duties and responsibilities of an employee on an approved leave of absence or an employee that has separated from the agency; or

(b) To undertake a special project assigned by the appointing authority in addition to the employee's regular duties and responsibilities.

(2) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent during the detail to special duty.

(3) After completion of the special assignment, the employee shall be transferred to the classification or resume normal duties with the employee's salary reduced by five (5) percent.

(4) An employee shall be entitled to salary increases provided by the agency during the special assignment.

Section 11. Educational Achievement and Skill Enhancement

Pay. (1) The job-related skill enhancement pay shall be granted to recognize and reward an employee who takes the initiative through his or her own efforts to increase job worth and significantly enhance his or her value to the agency by achieving a higher level of performance through a prescribed course of study in the employee's job field.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement salary increase.

(4) An appointing authority may grant a five (5) percent increase to an employee's salary for obtaining a high school diploma, high school equivalency certificate, or a passing score on the GED test:

(a) Outside of work hours; and

(b) While in the employment of the agency.

(5) An appointing authority may grant a five (5) percent increase to an employee's salary for postsecondary education or training if:

(a) The department has determined the employee has completed 260 hours of job-related classroom instruction;

(b) The employee began the course work after becoming an employee of the agency and completed the course work after establishing an increment date;

(c) The employee has completed the course work within five (5) years of the date on which it began;

(d) The course work has not previously been applied toward an educational achievement award;

(e) The agency has not paid for the course work or costs associated with it; and

(f) The employee was not on educational or extended sick leave when the courses were taken.

(6) An appointing authority may grant, with the approval of the

department, an employee a lump sum merit payment not to exceed three (3) percent of the employee's grade minimum to an employee that presents a certificate, license, or other evidence of mastering a body of knowledge obtained through a prescribed course of study that is directly related to the position held and based on this evidence is identified as an approved program by the department.

(7) The salary adjustment for educational achievement shall not include on the job training provided by or required by the agency as part of the assigned job duties and responsibilities.

Section 12. Other Salary Adjustments. (1)(a) An agency may submit a request to the department substantiating the need for a specific salary adjustment for regular status employee in classified service to address:

1. Compensation issues of the agency that negated the ability of the agency to commit available financial resources to salary adjustments based on the most recent compensation plan changes;

2. Special working conditions;

3. After hours adjustment if working hours cannot be adjusted;

4. Internal or external equity issues among individual employees or groups of employees; or

5. Other specific circumstances.

(b) The request shall address:

1. The nature of the salary issue;

2. The consequences of the salary issue;

3. Recommendation of an equitable resolution; and

4. Other pertinent information substantiating the need for the salary adjustment.

(c) The department may undertake a review of the request to determine the validity of the request, the impact on the submitting agency, and the impact on other agencies.

(2)(a) An agency may grant a one (1) time salary adjustment for all employees during the fiscal year to:

1. Respond to retention and recruitment needs and issues of the agency based on the inability of the agency to attract and maintain a qualified workforce in order to provide services; or

2. Place the agency in a more favorable competitive market and equity position based on an assessment of comparable agencies.

(b) The salary adjustment shall be a prescribed amount given to an employee determined by:

1. Applying an amount not to exceed five (5) percent to the employee's grade minimum;

2. Applying an amount not to exceed five (5) percent to the employee's grade midpoint; or

3. Specifying a fixed hourly amount that would be provided to an employee.

Section 13. Discretionary Salary Increases. (1) The appointing authority may grant, with the approval of the department, a salary increase not to exceed five (5) percent for a regular status employee or employees who have demonstrated, based on the current performance evaluation, excellent performance and achievement. This increase shall be limited to one (1) increase annually.

(2) The Board of Health may grant ~~[with the approval of the department,]~~ a salary increase ~~[not to exceed five (5) percent.]~~ for a regular status public health director or administrator who has demonstrated, based on the current performance evaluation, excellent performance and achievement. The increase shall be limited to one (1) increase annually.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: May 9, 2022 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 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 July 18, 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 July 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: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies and procedures regarding salary adjustments for local health departments.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755(3)(a)3 and 9 authorize the cabinet to promulgate through administrative regulations a salary, wage, and price policy and administration and establish a method of salary increments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation outlines the employee actions that can result in a salary adjustment and establishes the rate for salary increments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all local health department personnel are aware of the activities that can result in a salary adjustment and understand the rate of that adjustment.

(2) If 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 clarifies the reclassification process for local health department employees, removes Department for Public Health approval for a local Board of Health to give a local health department director a discretionary pay increase, and removes the five (5) percent limit on the discretionary pay increase for local health department directors.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to clarify the reclassification process to ensure a better understanding for employees. A local Board of Health is able to fix the salary of a local health department director, and removing the approval of the department for this will improve that process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.1755 authorizes the cabinet to administer a personnel program for local health departments based on the principles of merit and to promulgate administrative regulations to establish policies and procedures for the personnel program, which shall include a classification plan and compensation plan.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure local health department staff have a clear understanding of the reclassification process and removes the administrative burden of the department to approve a

local Board of Health discretionary raise for a local health department director.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect fifty-eight (58) local health jurisdictions and 2,300 employees. The Lexington-Fayette County, the Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempted from this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Local health department personnel will need to be familiar with the provisions for salary adjustment and understand the limits placed on these adjustments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Costs to the local health departments will be based on the salary increases offered to employees under the provisions of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation, local health department staff will benefit from consistent application of the rules for salary adjustments.

(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 are no initial costs to the cabinet to implement this administrative regulation.

(b) On a continuing basis: There are no anticipated costs to the cabinet to implement this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The budget for a local health department is a mix of state and local funds. The local health department personnel branch within the Division of Administration and Finance is funded with state general fund dollars.

(7) Provide an assessment of whether an 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 administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as all local health department personnel are eligible for salary adjustments.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments, district health departments, Local Health Personnel Branch within the Division of Administration and Financial Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.1755.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? This is an ongoing program, there are no additional cost to administer the program.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This is an ongoing program. This administrative regulation will not impact costs for the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not impact costs for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? This is an ongoing program. This administrative regulation will not impact costs for the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not impact costs for the regulated entities in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)**

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

RELATES TO: KRS 211.090(3), 211.170(2)[(4)], 211.1751, 212.170(4), 212.870, 237.109, 237.115(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the personnel program for local health departments. This administrative regulation establishes separations and disciplinary procedures applicable to a local health department.

Section 1. Disciplinary Action. (1) An appointing authority may discipline an employee for:

(a) Lack of good behavior; or

(b) Unsatisfactory performance of a job duty.

(2) A situation that may warrant disciplinary action shall include:

- (a) Inefficiency or incompetency in the performance of a duty;
- (b) Negligence in the performance of a duty;
- (c) Careless, negligent, or improper use of local health department property or equipment;
- (d) Excessive absenteeism;
- (e) Habitual pattern of failure to report for duty at the assigned time and place;
- (f) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment;
- (g) Willful abuse or misappropriation of funds, property, or equipment;
- (h) Falsification of an official document relating to or affecting employment;
- (i) Disrupting, disturbing, or interfering with management of agency operation;
- (j) Abusive behavior towards a patient, coworker, or the public in the performance of a duty;
- (k) Insubordination;
- (l) Reporting to work under the influence of alcohol or illegal drugs, or partaking of alcohol or illegal drugs on the job;
- (m) Sleeping or failure to remain alert during working hours;
- (n) Violation of confidential information policies of the agency or assigned program;
- (o) Prohibited political activity;
- (p) Unauthorized or unreported absence [~~or absence~~] for any period of working without notifying supervisor;
- (q) Breach of state law, an agency rule, policy, or directive; ~~or~~ and
- (r) Performing an unauthorized duty, or performing a duty requiring special training, licensure, or certification, that the employee has not attained.

Section 2. Administering Disciplinary Actions. (1) A classified employee with regular status shall not be disciplined by the appointing authority except for cause.

(2) Except as provided by subsection (4) of this section, an appointing authority shall apply discipline in a progressive manner, with each disciplinary action more severe, in an effort to correct an employee's performance or behavior problem.

(3) Progressive discipline shall consist of the following actions:

- (a) Verbal admonishment;
- (b) Written admonishment or warning;
- (c) Demotion or suspension; and
- (d) Dismissal.

(4) One (1) or more of the disciplinary actions stated in subsection (3) of this section may be bypassed by the appointing authority based on the severity of the performance or behavior problem.

Section 3. Predisiplinary Action Meeting. (1) Except as provided in Section 5(1) of this administrative regulation, prior to a demotion provided by 902 KAR 8:090, Section 3(1)(c), suspension, or dismissal, a classified regular employee with status shall be notified in writing of the intent of the agency to demote, suspend or dismiss the employee. The notice shall also include ~~the following~~:

(a) The specific reasons for the demotion, suspension, or dismissal including:

- 1. The statutory, regulatory, or agency policy violation; and
- 2. The specific action or activity that resulted in the intent to demote, suspend, or dismiss;
- (b) The date, time, and place of the action or activity;
- (c) The name of each party involved; and
- (d) That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.

(2) A request to appear to reply to the appointing authority shall be:

- (a) In writing; and
- (b) Made within two (2) working days of receipt of the notice of intent to demote, suspend, or dismiss.
- (3) The meeting shall be held within six (6) working days after

receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.

(5) If the appointing authority decides to demote, suspend, or dismiss, the employee shall be notified in writing of ~~the following, in writing~~:

- (a) The effective date of the demotion, suspension, or dismissal;
- (b) The reason for the demotion, suspension, or dismissal, including the:
 - 1. Statutory, regulatory, or agency policy violation; and
 - 2. Specific action or activity that resulted in the demotion, suspension, or dismissal;
- (c) The date, time, and place of the action or activity, if known;
- (d) The name of each party or witness involved; and
- (e) The right to appeal the demotion, suspension, or dismissal in accordance with 902 KAR 8:110.
- (6) The appointing authority shall provide the employee with the appeal request form.

Section 4. Conditions for Bypassing Progressive Discipline and the Issuance of a Notice of Intent for the Suspension or Dismissal of an Employee. (1) An appointing authority may issue a notice of intent for the suspension or dismissal of an employee for a serious misconduct infraction.

(2) An example of a misconduct infraction that may be considered serious enough to merit an immediate intent of suspension or dismissal includes ~~the following~~:

- (a) Threatening, assaulting, fighting with, or harassing a supervisor, another employee, or anyone encountered during the normal course of business;
- (b) Stealing or deliberately damaging the property of:
 - 1. The agency;
 - 2. A client;
 - 3. A patient; or
 - 4. Another employee;
- (c) Reporting to work under the influence of alcohol, narcotics, or other drugs, unless the drug was prescribed by a physician;
- (d) Taking unauthorized leave or failing to show up at work without notifying a supervisor for more than three (3) consecutive work days;
- (e) Engaging in a fraudulent activity;
- (f) Breach of the employee confidentiality agreement; or
- (g) Performing a procedure on a patient or client for which the employee has neither been certified nor has the current credentials to perform.

(3) The employee shall be notified by the appointing authority regarding the intent to suspend or dismiss.

(4) If an employee wishes to reply to a notice, the employee shall:

- (a) Request to appear personally before the appointing authority. The request shall be:
 - 1. In writing; and
 - 2. Made within two (2) working days of receipt of the notice; and
- (b) File the request with the appointing authority. If a request is mailed by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

(5) An employee may be represented by counsel at an appearance before the appointing authority.

(6) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(7) Within five (5) working days after the employee appears to reply to the intent to suspend or dismiss, the appointing authority shall determine whether to modify, or rescind the intent to suspend or dismiss. The appointing authority shall notify the employee in writing of the decision.

(8) If the appointing authority decides to suspend or dismiss immediately following the meeting, the employee shall be notified in writing of the following, in writing:

- (a) The effective date of the suspension or dismissal;
- (b) The reason for the suspension or dismissal, including the:
 - 1. Statutory, regulatory, or agency policy violation; and
 - 2. Specific action or activity on which the suspension or dismissal is based;
- (c) The date, time, and place of the action or activity, if known;
- (d) The name of each party or witness involved; and
- (e) The right to appeal the suspension or dismissal in accordance with 902 KAR 8:110.

Section 5. Directive to Vacate Premises. (1) If an employee has committed a serious misconduct infraction, and there is a need to diffuse a presently dangerous or disruptive situation, or the appointing authority intends to terminate the employee's employment, a director or designee may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken.

(2) A pre-termination hearing shall be provided within three (3) working days after removal.

(3) The employee may be placed on leave using accumulated leave or on immediate suspension without pay.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 27, 2022

FILED WITH LRC: May 4, 2022 at 12:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 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 July 18, 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 July 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: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes separations and disciplinary procedures applicable to employees of a local health department.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755 authorizes the cabinet to administer a personnel program for local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes disciplinary procedures to be followed by local health

departments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures local health department employees are aware of applicable disciplinary and separation procedures. This administrative regulation also provides the employee an opportunity for a meeting prior to any disciplinary action.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation makes a technical correction to the situations that may warrant disciplinary action and makes other corrections for KRS Chapter 13A compliance.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to correctly identify the situations that may result in disciplinary action against an employee of a local health department.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.1755 authorizes the cabinet to establish policies and procedures for the personnel program through the promulgation of administrative regulations. The personnel policies for the governance of all agency employees shall include conditions of employment and conditions of termination.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will simplify the disciplinary action process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect fifty-eight (58) local health departments and approximately 2,300 employees. The Lexington-Fayette County, Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempt from this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Local health department employees and directors will need to be aware of the technical change and adjust the disciplinary processes accordingly.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The amendment to this administrative regulation will not result in a costs to local health department employees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health department employees will have a clear and consistent understanding of the actions that can result in disciplinary action.

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

(a) Initially: This is an ongoing program, there will be no initial costs to the administrative body.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funds 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: There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees. There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as the amendment to this administrative regulation affects all regulated entities equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments, district health departments, and the Local Health Department Personnel Branch within the Division of Administration and Financial Management.

(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 211.1755.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? This is an ongoing program, there will be no initial costs.

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will not generate costs savings for the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate costs savings for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will not result in increased costs for the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not result in increased costs for the regulated entities in subsequent years.

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

Cost Savings(+/-):
Expenditures (+/-):
Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)

902 KAR 8:120. Leave provisions applicable to employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870, Chapter 337, 29 C.F.R. Part 825, 29 U.S.C. Chapter 8, 207, 2601, Pub.L. 103-3

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2), (3)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. KRS 211.1755(3)(a)1. authorizes the cabinet to promulgate administrative regulations for local health department personnel leave policies. This administrative regulation establishes work hours, leave, and compensatory time provisions for employees of local health departments.

Section 1. Hours of Work. (1) The normal work week shall consist of thirty-seven and one-half (37.5) hours per week.

(a) The appointing authority shall establish the hours and days of work for the agency or for specific employees.

(b) The work schedule may be changed by the appointing authority to provide for flexibility in meeting particular work requirements of the agency or specific employees whose schedules may require them to work different hours.

(2) Hours worked in excess of the thirty-seven and one-half (37.5) hours during the established work week shall be:

- (a) Approved by the appointing authority; and
- (b) Subject to compensatory time and overtime provisions of this administrative regulation.

(3) The standard pay period shall consist of seventy-five (75) hours.

(4) An appointing authority, with department approval, may establish a position having special conditions of employment based on the needs of the agency.

(5) The employee who requests and receives consideration for special conditions shall acknowledge acceptance of the special conditions in writing.

Section 2. Earning of Annual Leave. (1) Except for a temporary or emergency employee, a full-time employee shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Year of Twenty-six (26) Pay Periods
0 to 5 years	3.5 hours per pay period-91.0 hours per year
5 to 10 years	4.4 hours per pay period-114.4 hours per year
10 to 15 years	5.2 hours per pay period-135.2 hours per year
15 to 20 years	6.1 hours per pay period-158.6 hours per year
20 years or more	7.0 hours per pay period-182 hours per year

(2) Annual leave for a full-time employee shall not accrue unless the employee has been in pay status at least thirty-seven and one-half (37.5) hours of the standard pay period. The employee shall be credited with additional leave credit upon the first day of the pay period following the pay period in which the leave was earned.

(3) Except for a temporary or emergency employee, a part-time employee, who is designated as serving on a part-time 100 hour basis and is in pay status at least twenty-three (23) hours each pay period, shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Year of Twenty-six (26) Pay Periods
0 to 5 years	2.1 hours per pay period-54.6 hours per year
5 to 10 years	2.6 hours per pay period-67.6 hours per year

10 to 15 years	3.1 hours per pay period-80.6 hours per year
15 to 20 years	3.6 hours per pay period-93.6 hours per year
20 years or more	4.2 hours per pay period-109.2 hours per year

(4) In computing years of total service for determining the rate of earning annual leave for designated part-time 100 hour employees, only the months the employee was designated as a full-time, part-time 100 hour, or was on educational leave with pay shall be used.

(5) An employee who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to an agency, shall not receive credit for months of service prior to retirement.

(6) An employee who has resigned from one agency and returns to another agency as an original appointment shall not receive credit for months of service prior to resignation.

(7) Annual leave shall not accrue unless an employee is working or on authorized leave with pay. Annual leave shall not accrue if an employee is on authorized educational leave with pay.

(8) The maximum amount of annual leave earned by a full-time employee that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount of Annual Leave Earned by Full-time Employees
0 to 5 years	225.0 hours
5 to 10 years	277.5 hours
10 to 15 years	337.5 hours
15 to 20 years	390.0 hours
Over 20 years	450.0 hours

(9) The maximum amount of annual leave for a designated part-time 100 hour employee who works an average of 100 hours per month that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount of Annual Hours Earned by Designated Part-time 100 Employees
0 to[-] 5 years	120 hours
5 to[-] 10 years	148 hours
10 to[-] 15 years	180 hours
15 to[-] 20 years	208 hours
Over 20 years	240 hours

(10) Except as provided for in Section 3(8) of this administrative regulation, annual leave earned in excess of that which is allowed to be accumulated shall be converted to sick leave and credited during the first pay period following the end of the calendar year. Annual leave shall not be granted in excess of that earned.

Section 3. Use of Annual Leave Credit. (1) An employee who has accumulated annual leave credit, upon timely request and subsequent approval of the supervisor, shall be granted leave subject to the operating requirements of the agency.

(2) An employee shall not be charged with annual leave for absence except on a day upon which they would otherwise work and receive pay.

(3) Absence for a fraction or part of a day that is chargeable to annual leave shall be charged in fifteen (15) minute periods.

(4) An employee shall be paid a lump sum for accumulated annual leave, not to exceed the maximum amounts established in Section 2 of this administrative regulation, if separated by proper resignation, layoff, retirement, or change from full-time or part-time 100 hour to part-time. Following payment of annual leave, leave remaining after the payment of the maximum provided in Section 2 of this administrative regulation shall be removed from the balance.

(5) Upon the death of an employee, the employee's estate shall be entitled to be paid for the unused portion of the employee's accumulated annual leave.

(6) Annual leave shall not be advanced or taken until it is earned.

(7) An absence due to sickness, injury, or disability in excess of accumulated sick leave, may be charged against annual leave if approved by the appointing authority.

(8) An employee who has accumulated annual leave in excess of 275 hours may request payment of an amount of annual leave

not to exceed seventy-five (75) hours during the fiscal year of the agency. The requested annual leave payment, if approved by the appointing authority, shall not reduce the employee's balance of annual leave below 275 hours and shall be paid in a manner convenient to the agency.

(9) An appointing authority may require an employee who has a balance of compensatory leave hours to use compensatory leave before the employee's request to use annual leave balance is granted, unless the employee's annual leave balance will exceed the maximum number of hours that may be carried forward pursuant to Section 2(8) and (9) of this administrative regulation.

Section 4. Earning of Sick Leave. (1) A full-time employee, except an emergency employee, shall earn sick leave at the rate of three and one-half (3.5) hours per pay period.

(a) An employee shall have worked or been in pay status for at least thirty-seven and one-half (37.5) hours of the seventy-five (75) standard hours in each pay period in order to accumulate sick leave.

(b) The employee shall be credited with sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(2) An employee designated as a part-time 100 hour employee, except an emergency employee, who is in pay status at least twenty-three (23) hours in a pay period shall earn sick leave at the rate of two and one-tenth (2.1) hours per pay period. A part-time 100 hour employee shall be credited with additional sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(3) A full-time employee completing ten (10) years of total service in full-time status with an agency shall be credited with seventy-five (75) additional hours of sick leave.

(4) An employee designated as a part-time 100 hour employee completing ten (10) years of total service in a part-time 100 status with an agency shall be credited with forty-five (45) additional hours of sick leave.

(5) A full-time employee completing 240 months of total service in a full-time status with one (1) or more agencies shall be credited with an additional seventy-five (75) hours of sick leave.

(6) An employee designated as a part-time 100 hour employee completing 240 months of total service in a part-time 100 status with one (1) or more agencies shall be credited with forty-five (45) additional hours of sick leave.

Section 5. Uses of Sick Leave Credit. (1) The appointing authority, upon proper request, may grant sick leave with pay to a full-time or designated part-time 100 hour employee with sufficient leave credit, if the employee:

(a) Receives medical, psychiatric, dental, or optical examination or treatment;

(b) Is disabled by sickness or injury;

(c) Is required to provide care for a sick or injured spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step-sister, grandparent, step-grandparent, grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law;

(d) Would jeopardize the health of others at his or her workstation post because of exposure to a contagious disease;

(e) Has lost by death a spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step-sister, grandparent, step-grandparent, grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law; or

(f) Is required to take the employee's spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step sister, grandparent, step-grandparent, grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law[;] for medical, psychiatric, dental, or optical examination or treatment.

(2) Accumulated sick leave may be granted for death in the employee's family, as described in subsection (1) of this section, and shall be limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(3) An employee shall file a written request for sick leave with or without pay within a reasonable time. An employee shall request advance approval for sick leave for medical, dental or optical

examination and for sick leave without pay.

(4) Except for an unexpected absence from work because of an illness, the employee shall notify the employee's supervisor or other designated person in advance. Failure to do so in a reasonable time period may be cause for denial of the sick leave for the period of absence or for disciplinary action.

(5)(a) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave for the days or hours sick leave is requested.

(b) ~~[A supervisor's or employee's certificate may be accepted, but]~~ A medical certificate may be required signed by a licensed practitioner and certifying to the incapacity, examination, and treatment during the time for which sick leave was taken.

(c) An appointing authority may grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

(6) If an employee requests leave in excess of five (5) working days, a statement from the employees' licensed practitioner shall accompany the request for leave. The statement shall contain ~~[the following]~~:

(a) The licensed practitioner's judgment that the employee is incapable of performing the essential duties of the job;

(b) Estimate of the length of time that the employee's illness or disability will last;

(c) Restrictions ~~that~~~~[which would]~~ render the employee incapable of performing the essential duties of the job; and

(d) Recommendation for special considerations to accommodate the employee once released to return to work.

(7) An appointing authority may place an employee on sick leave with or without pay, if:

(a) The employee's health might jeopardize others;

(b) The employee's health prevents performance of job duties and responsibilities;

(c) The employee fails to produce a satisfactory medical certificate upon request; or

(d) The employee exhibits behavior that disrupts the agency's ability to function in providing services or that might endanger the employee or others.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in fifteen (15) minute periods.

(9) An employee who is transferred or otherwise changed from one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(10) A former employee who is reinstated or reemployed shall have his or her previous rate of earning annual leave and unused sick leave balances reinstated upon successful completion of probation, if applicable.

(11) Sick leave may be utilized in cases of absence due to illness or injury for which workers' compensation income benefits are received for lost time to the extent of the differences between these benefits and the employee's regular salary.

Section 6. Family and Medical Leave. (1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 et seq., Pub.L. 103-3, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of services; and

(b) Worked at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(4) While an employee is on unpaid family and medical leave, the employer contribution for health and life insurance shall be maintained by the employer.

(5) An employee shall use accrued paid leave concurrently with FMLA leave, except an employee may reserve up to ten (10) days of accumulated sick leave while on FMLA leave. If an employee reserves accumulated sick leave, the remaining FMLA

leave will be unpaid.

Section 7. Maternity Leave. (1) The appointing authority shall grant a maternity leave of absence to an employee because of pregnancy or the adoption of a child. Maternity leave shall not exceed twelve (12) weeks, unless the appointing authority approves additional maternity leave. However, the total leave shall not exceed twenty-six (26) pay periods.

(2) The employee on maternity leave shall use accumulated sick leave credit if available:

(a) For the period of time medically necessary to be absent from work as indicated by the certification of a licensed practitioner; or

(b) For the period of time for placement of a child for adoption with the employee that includes:

1. Counseling sessions;

2. To appear in court;

3. Consult with attorneys or doctors representing the birth parents;

4. Submit to a physical; or

5. Travel to complete adoption.

(c) If sick leave is not available, the employee shall use accumulated annual or compensatory leave if available.

(d) If leave credit is exhausted, the employee shall be placed on leave without pay.

(3) Accumulated annual and compensatory time shall be used for maternity leave that extends beyond the period of absence that is medically necessary for the employee as certified by the employee's medical practitioner.

(4) The employee shall submit a written request for maternity absence, which shall include a statement from a licensed practitioner indicating the expected date of delivery.

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's licensed practitioner may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond twelve (12) weeks.

Section 8. Workers' Compensation. (1)(a) The required medical expense for a service rendered by a hospital or doctor, or for a prescribed medication, shall be paid subject to approval of the claim.

(b) A percentage of the employee's average weekly wage shall be paid if the employee is unable to work for an extended period due to a job-related injury or illness.

(c)1. Except as provided in subparagraph 2. of this paragraph, compensation shall not be payable for the first seven (7) days of disability.

2. If the disability continues over two (2) weeks, compensation shall be allowed from the first day of disability.

(2) The appointing authority shall offer an employee one of the following options of compensation for an absence due to illness or injury for which workers' compensation benefits are eligible:

(a) Allow employee to accept the workers' compensation benefits directly and use accumulated leave in order to maintain regular full salary; or

(b) Allow employee to use accumulated leave to maintain regular full salary, or a portion thereof, and remit the workers compensation benefits to the agency to reinstate accumulated leave used for the period of time benefits were paid.

(3) The employee shall not receive and retain the benefit of paid leave and workers' compensation income benefits that exceeds his or her regular full salary for the same period of time.

Section 9. Sick Leave Without Pay. (1) An appointing authority may approve sick leave without pay upon appropriate request of an employee ~~[for reasons provided for in this section]~~.

(2) An employee shall have used accumulated annual, sick, and compensatory leave credit prior to approved leave without pay.

(3) ~~[The amount of continuous sick leave without pay approved~~

by an appointing authority shall not exceed twenty-six (26) pay periods.

(4) If an employee approved for leave with pay exhausts accumulated annual, sick, and compensatory leave credit, the employee shall be placed on sick leave without pay, if the total absence does not exceed twenty-six (26) pay periods.

(4)(5) The appointing authority may require periodic statements from a licensed practitioner during the sick leave without pay period attesting to the employee's inability to perform the essential functions of the employee's job duties with or without reasonable accommodation.

Section 10. Return from Sick Leave With or Without Pay. (1) At the termination of sick leave with pay not exceeding thirteen (13) pay periods, the appointing authority shall return the employee to his or her former position.

(2) At the termination of sick leave with pay exceeding thirteen (13) pay periods, the appointing authority shall return the employee to a position for which he or she is qualified and ~~that~~which resembles his or her former position as closely as circumstances permit. If the employee is unable to perform the essential functions of the position, and there is no other vacant position for which the employee qualifies and is able to perform, the employee may be laid off.

(3)(2) If an employee on approved sick leave without pay for less than twenty-six (26) pay periods has given notice of his or her ability to resume his or her duties, the appointing authority shall return the employee to a position for which he or she is qualified and ~~that~~which resembles his or her former position as closely as circumstances permit. If the employee is unable to perform the essential functions of the position, and there is no other vacant position for which the employee qualifies and is able to perform, the employee may be laid off.

(4)(3) An employee shall be considered to have resigned if the employee:

(a)1- Has been on continuous sick leave without pay for twenty-six (26) pay periods;

(b)2- Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave;

(c)and

3- Is unable to return to the employee's former position or to a position for which the employee is qualified and that resembles the former position as closely as circumstances permit;

(d) [work; or

(b)1- Has been given priority consideration by the appointing authority for a vacant position with the agency, for which the employee qualifies and is capable of performing its essential functions with or without reasonable accommodation; and

(e)2- The appointing authority has been unable to place the employee in a vacant position.

Section 11. Sharing of Sick Leave. (1) An employee of the local health department who has accrued a sick leave balance of more than seventy-five (75) hours may, with the approval of the appointing authority, request the transfer of a specified amount of the employee's sick leave balance in excess of seventy-five (75) hours to another named status employee of the local health department who is authorized to receive sick leave.

(2) The appointing authority may approve the amount of sick leave received under this section if:

(a) The employee or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or psychiatric condition ~~that~~which has caused, or is likely to cause, the employee to go on leave;

(b) The employee's need for absence and use of leave are certified by a licensed practitioner; and

(c) The employee has exhausted his or her accumulated sick leave, annual leave, and compensatory leave balances.

(3) Leave may be transferred from an employee of one agency to an employee within the same agency or may be transferred from an employee of one (1) agency to an employee of another agency. The agency shall maintain records of leave transferred between

employees and the utilization of transferred leave.

(4) If an employee is on leave transferred under this section, he or she shall receive the same treatment with respect to salary, wages, and employee benefits.

(5) Salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave.

(6) Leave transferred under this section which remains unused shall be returned, on a prorated basis, to the employees who transferred the leave if the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his or her agency.

(7)(6) An employee shall not intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, either directly or indirectly, another employee for the purpose of interfering with the employee's right to voluntarily contribute leave as authorized under this section.

Section 12. Court Leave. An employee shall be entitled to a leave of absence, without loss of pay or time, for each day ~~during which~~ the employee is subpoenaed by a court to serve as a juror or witness, except in a case where the employee or a member of the employee's family is a party plaintiff. If relieved from duty as a juror or witness during normal working hours, the employee shall return to work. An employee shall retain the fees earned while serving as a potential juror.

Section 13. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from duty without the loss of pay or time to serve under orders on training duty for a period of up to ten (10) working days, not to exceed seventy-five (75) hours in any one (1) federal fiscal (October 1 to September 30) year. The appointing authority, before granting military leave, may require a copy of the orders requiring the attendance of the employee.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of active duty not to exceed six (6) years. Accumulated annual leave and compensatory leave may be paid in lump sum at the request of the employee, upon being placed on leave.

(3) A part-time 100 or full-time status employee, who is a spouse or a member of the U.S. Armed Forces, including a member of a state National Guard or a Reserve component on federal duty, shall receive one (1) day off, with pay, from work when the member is deployed and one (1) day off, with pay, from work when the member returns.

Section 14. Voting Leave. The appointing authority shall allow each employee four (4) hours paid leave to vote, if requested in advance. The absence shall not be charged against accumulated leave.

Section 15. Special Leave of Absence. (1) An appointing authority may grant special leave for education, training, or for other circumstances.

(2) Leave may be granted for a period not to exceed twenty-six (26) pay periods.

(3) Leave may be granted without pay if all other leave has been exhausted.

(4) Leave for attendance at a college, university, vocational or business school shall be for training in subjects that:

(a) Relate to the employee's work; and

(b) Will benefit the agency.

Section 16. Administrative Leave for Investigative Purposes. (1) An appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of a work-related incident or an allegation of employee misconduct.

(2) Leave shall not exceed thirty (30) working days.

(3) The employee shall be notified in writing by the appointing authority that he or she is being placed on special leave for investigative purposes[,] and the reasons for being placed on leave.

(4) If the investigation reveals no misconduct by the employee:

(a) The employee shall be made whole for the period of the leave; and

(b) Records relating to the investigation shall be purged from agency files.

(5) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether the employee has remained with the agency, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation.

Section 17. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the employee's supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

(c) [deduction of pay may be made by the appointing authority for each period of absence.

~~(3) Absence without leave may~~ constitute grounds for disciplinary action.

(3) A deduction of pay may be made by the appointing authority for each period of absence.

(4) An employee who has been absent without leave or notice to the supervisor for more than three (3) working days shall be considered to have resigned the employee's position.

Section 18. Holidays. (1) Agency full-time employees shall be given a holiday on the following days:

(a) The first day of January and one (1) extra day;

(b) The third Monday in January;

(c) One-half (1/2) day for Good Friday (3.75 hours);

(d) The last Monday in May;

(e) The fourth day of July;

(f) The first Monday in September;

(g) The 11th day of November;

(h) The fourth Thursday in November plus one (1) extra day;

(i) The 25th of December and one (1) extra day; and

(j) Presidential election day.

(2) If a day enumerated in subsection (1) of this section falls on a Saturday, the preceding Friday shall be observed as the holiday. If the day enumerated falls on a Sunday, the following Monday shall be observed as the holiday. If an extra day is provided for, it shall be observed as stated by the department.

(3) A full-time employee shall be in pay status on the work day prior to the holiday in order to receive the holiday benefit.

(4) Full-time exempt employees required to work on a holiday shall accrue compensatory time for the time worked.

Section 19. Absences Due to Adverse Weather. (1) An employee who chooses not to report to work, or who leaves early, in the event of adverse weather conditions, shall have the absence:

(a) Charged to annual or compensatory leave; or

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested unless the agency closes down. Once the agency closes, ~~[down]~~ all employees are paid other paid leave.

(3) If catastrophic, life-threatening weather conditions occur, such as that created by hurricane, tornado, flood, or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to Section 20 of this administrative regulation.

Section 20. Earning of Compensatory Time. (1) An employee determined to be exempt under the provisions of the Fair Labor Standards Act, 29 U.S.C. 207, and Kentucky Wage and Labor Law, KRS Chapter 337, authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall accumulate compensatory time in fifteen (15) minute periods for excess time worked on an hour-for-hour basis. The maximum amount of compensatory time accumulated shall be 200 hours.

(2) An employee shall have the prior approval of the appointing authority or the employee's immediate supervisor before compensatory leave may be earned.

(3) A nonexempt employee authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall be paid at the employee's current salary for each hour not subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. 207, and Kentucky Wage and Labor Law, KRS Chapter 337.

(4) Any time worked in excess of forty (40) working hours in one (1) week shall be paid overtime at a rate of one and one-half (1 1/2) for each hour exceeding forty (40) working hours. Holiday pay and other types of non-working hours paid are not included in the total number of working hours subject to time and a half overtime pay.

Section 21. Using Accumulated Compensatory Time. (1) An employee who has accrued compensatory time shall be permitted by the appointing authority to take compensatory time off if practical and upon proper request by the employee.

(2) An employee who has accumulated at least thirty (30) hours of compensatory time may be paid for the accumulated leave by the appointing authority upon written request. If payment is approved by the appointing authority, it shall be at the employee's regular rate of pay and in thirty (30) hour increments.

(3) If an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for at least fifty (50) hours of accumulated compensatory leave at the employee's regular rate of pay and shall reduce the employee's compensatory leave balance accordingly.

(4) Upon separation from service or transfer to another agency, unused compensatory time shall be reimbursed in a lump sum payment to the employee.

(5) Upon the death of an employee, the employee's estate shall be paid for unused accumulated compensatory time.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: May 9, 2022 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 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 July 18, 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 July 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: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes work hours, leave, and compensatory time provisions for employees of local health departments.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755 authorizes the cabinet to administer a personnel program for local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.1755(3)(a)1 authorizes the cabinet to establish leave policies for local health department employees. This administrative regulation covers multiple leave categories.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that employees understand the provisions for accruing and using all available forms of leave.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies the requirements for using sick leave, provides that an employer may place an employee on sick leave with or without pay as needed, clarifies the requirements for using family medical leave for consistency with the federal requirements, revises the sick leave without pay provisions, adds that adverse weather leave may be charged to the employees accumulated compensatory leave, and makes other changes necessary for KRS Chapter 13A compliance.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to provide local health department employees clear guidance on the options available for using accumulated leave time.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.1755 authorizes the cabinet to establish policies and procedures for the personnel program through the promulgation of administrative regulations. The personnel policies for the governance of all agency employees shall include leave policies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure a consistent application for the use of available leave time, including the use of family medical leave, for local health department employees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect fifty-eight (58) local health jurisdictions and 2,300 employees. The Lexington-Fayette County, the Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempted from 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: Local health department employees will need to be familiar with the options available for the use of accumulated leave time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no cost to local health department employees to comply with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health department employees will have a consistent understanding and application of the options for using their accumulated leave time.

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

(a) Initially: This is an ongoing program. There will be no initial costs to the administrative body.

(b) On a continuing basis: There will be increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funds 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: There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this amendment affects all regulated entities equally.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments, district health departments, Local Health Department Personnel Branch within the Division of Administration and Financial Management.

(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 211.1755.

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

How much 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? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be no additional costs in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This is an ongoing program. This administrative regulation will not impact costs for the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not impact costs for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? This is an ongoing program. This administrative regulation will not impact costs for the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will not impact costs for the regulated entities in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. The Family and Medical Leave Act (FMLA) of 1993, Pub.L. 103-3, 29 U.S.C. 2601, the Fair Labor Standards Act, 29 U.S.C. Chapter 8, 207, and 29 C.F.R. Part 825.

(2) State compliance standards. The cabinet is to administer a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal and other incidents of employment for county, city-county, and district agencies.

(3) Minimum or uniform standards contained in the federal mandate. The Family and Medical Leave Act, 29 U.S.C. 2601, entitles employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition. The Fair Labor Standards Act, 29 U.S.C. Chapter 8 and specifically 207, requires that an employee that works longer than forty (40) hours in a work week shall receive compensation for his or her work in excess of forty (40) hours at a rate not less than one and one-half (1 1/2) times the regular rate as which he or she is employed.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than those required under FMLA or the Fair Labor Standards Act.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 10:140. On-site sewage disposal system installer certification program standards.

RELATES TO: KRS 211.015, 211.360, 211.375, 211.970, 211.990(2)

STATUTORY AUTHORITY: KRS Chapter 13B, 211.350, 211.357

NECESSITY, FUNCTION AND CONFORMITY: KRS 211.350

requires the cabinet to regulate the construction, installation, or alteration of on-site sewage disposal systems except for systems with a surface discharge. KRS 211.357 requires the cabinet to establish a program of certification for installers of on-site sewage disposal systems. This administrative regulation establishes the certification program including competency testing, training, continuing education, and enforcement procedures relative to maintenance of an acceptable standard of competency for installers.

Section 1. Definitions. (1) "Approved" is defined by KRS 211.970(1).

(2) "Cabinet" is defined by KRS 211.015(1)(a).

(3) "Certification level" means the level of technical skills and knowledge attained by an installer as categorized below:

(a) "Provisional" or "Probationary level" means the certification entry level for an installer as specified in KRS 211.357(2) and Section 2(3) of this administrative regulation;

(b) "Full level" means the certification level attained by an installer as specified in KRS 211.357(2) and Section 2(4) of this administrative regulation;

(c) "Advanced level" means the certification level attained by an installer as specified in Section 2(5) of this administrative regulation; and

(d) "Master level" means the certification level attained by an installer as specified in Section 2(6) of this administrative regulation.

(4) "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.360.

(5) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and the certification maintenance requirements contained in this administrative regulation.

(6) "Competency" means an acceptable level of professional conduct, workmanship, and technical knowledge in the design and installation of on-site sewage disposal systems.

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

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

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

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

(d) A cluster system; and

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

(8) "Person" is defined by KRS 211.970(6).

Section 2. Application for Certification. (1) A person shall not offer services to construct, install, alter, or repair on-site sewage disposal systems without:

(a) Meeting the application requirement of this administrative regulation; and

(b) Obtaining a valid certification card from the cabinet.

(2) Certification shall be:

(a) Nontransferable from one (1) person to another;[and]

(b) Valid statewide subject to the provisions of KRS 211.357 and this administrative Regulation; and

(c) Renewed annually by submitting to the Environmental Management Branch a certification fee of forty-five (45) dollars by check or money order made payable to the Kentucky State Treasurer.

(3)(a) A person seeking provisional or probationary level certification shall:

1. Be of legal age to conduct business in Kentucky;
2. Have sufficient skills and knowledge of administrative regulations and construction techniques to pass a minimum competency examination;
3. Submit a completed DFS-303, Application for Certification or Registration, incorporated by reference in 902 KAR 45:065, to the local health department;
4. Provide proof of liability insurance; and
5. Pay the test registration fee of twenty-five (25) dollars by check or money order made payable to the local health department.

(b) A passing score of at least seventy (70) percent shall be achieved on the exam.

(c) An individual failing to achieve a passing score may retake the exam by re-registering and submitting another registration fee.

(d) An individual who passes the exam shall submit to the Environmental Management Branch~~[cabinet]~~ a forty-five (45) dollar certification fee by check or money order made payable to the Kentucky State Treasurer.

(4) A person seeking full level certification shall:

- (a) Have continuously maintained provisional or probationary level status in good standing;
- (b) Meet the requirements as specified in KRS 211.357(2);
- (c) Submit the documentation required in subsection (3)(a)3 and ~~4~~4 of this section; and
- (d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(5) A person seeking advanced level certification shall:

- (a) Have continuously maintained full level status in good standing;
- (b) Submit the documentation required in subsection (3)(a)3 and ~~4~~4 of this section;
- (c) Complete the necessary training workshops with passing scores on workshop tests to obtain advanced level certification as required by the cabinet; and
- (d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(6) A person seeking master level certification shall:

- (a) Have continuously maintained advanced level status in good standing;
- (b) Submit the documentation required in subsection (3)(a)3 and ~~4~~4 of this section;
- (c) 1. Installed a minimum of two (2) systems as specified in Section 3(4) of this administrative regulation; and
2. Submit written verification of passed inspection from a certified inspector employed by the local health department having jurisdiction; and
- (d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(7) A certified installer advancing to the next level certification shall submit the documentation required by subsections (4), (5), and (6) of this section, and a certification fee of forty-five (45) dollars by check or money payable to the Kentucky State Treasurer to the Environmental Management Branch.

Section 3. Certification Level Standards. Certification level standards shall be limited to on-site systems that utilize only the following:

- (1) Provisional or probationary certification level is limited to residential, on-site systems utilizing:
 - (a) Gravity distribution;
 - (b) Rock-filled trenches or beds;
 - (c) Leaching chamber trenches or beds; or
 - (d) Evaporation-absorption lagoons.
- (2) Full certification level is able to install residential, commercial, industrial, or public facility systems utilizing:
 - (a) Dosed systems;

- (b) Fill and wait systems;
- (c) Leaching chambers at grade; or
- (d) Constructed wetlands; and
- (e) Provisional or probationary certification level system listings.

(3) Advanced certification level is able to install residential, commercial, industrial, or public facility systems utilizing:

- (a) Low pressure pipe systems;
- (b) Mounds;
- (c) Drip irrigation;
- (d) Advanced treatment;
- (e) Experimental technology; or
- (f) Cluster systems; and
- (g) Provisional, probationary, and full certification level system listings.

(4) Master certification level is able to install residential, commercial, industrial, or public facility systems utilizing provisional, probationary, full, and advanced certification level system listings.

Section 4. Maintenance of Certification. (1) Each person holding a valid certification under KRS 211.357 shall be required to:

- (a) Attend training workshops offered by the cabinet to maintain certification and improve competency based on the level of certification attained;
- (b) Maintain and submit proof of liability insurance annually to the local health department; and
- (c) Annually pay the certification fee as required by Section 2(3)(d) of this administrative regulation~~—to the—Kentucky Department for Public Health~~.

(2) An installer whose certification has expired shall:

- (a) Comply with subsection (1) of this section;
- (b) Submit proof of completion of continuing education units; and
- (c) Receive a renewal certification card prior to installing an on-site sewage system.

(3)(a) For provisional, probationary, full and advanced certification levels, a minimum of two (2) training workshops for a total of six (6) approved continuing education units per year with passing scores on workshop tests shall meet certification maintenance requirements.

(b) For master certification level, a minimum of two (2) training workshops for a total of six (6) approved continuing education units every two (2) years with passing scores on workshop tests shall meet certification maintenance requirements.

(4) Attendance at workshops, seminars, or conferences not sponsored by the cabinet may be substituted on a one (1) for one (1) basis to meet certification maintenance requirements at the determination of the cabinet. Requests for consideration of other training for substitution shall be based upon the following:

- (a) Submission of a copy of the training agenda, speaker or presenter biographies, and course outlines; and
- (b) Submission of proof of attendance and results of any testing or other performance measurement with verification by the training sponsor.

(5) Upon receipt of a request for training substitution the cabinet shall compare that training for equivalency with similar training it provides. If equivalency is demonstrated, the cabinet shall accept that training for substitution as specified in subsection (4) of this section.

(6) Any person failing to meet certification maintenance requirements shall be subject to administration action under Section 7 of this administrative regulation and KRS 211.357(4).

Section 5. Training. (1) The cabinet shall develop and implement a series of training workshops for certified installers in the areas of on-site sewage disposal system design, technology, application and function.

(2) Training workshops shall be conducted throughout the state at frequencies, times, and locations necessary to provide all certified installers a reasonable opportunity to attend a number of workshops sufficient to maintain certification.

VOLUME 48, NUMBER 12– JUNE 1, 2022

(3) A schedule of training workshops, including dates, times, location, and topics shall be prepared and made available to all certified installers to notify them of training opportunities and allow for scheduling attendance.

(4) A series of training courses shall be developed including instructor and student manuals, and other audiovisual and written materials.

(5) The cabinet may charge a reasonable fee at each training workshop to support program costs.

(6) The cabinet shall establish, through grants or contracts, a training staff composed of local health department fully certified inspectors to conduct training workshops on a regional basis. These local instructors shall serve as supplemental staff to the cabinet and act under the direct supervision of the cabinet.

(7) Training workshops for staff and supplemental staff instructors shall be conducted to assure uniformity of training for certified installers.

(8) The cabinet may contract with other governmental agencies, private consultants, or professional organizations for specialized instructor services.

Section 6. Materials and Equipment. (1) Each training course shall be developed into a training materials packet consisting of the following:

- (a) Course outline;
- (b) Instructor script;
- (c) Trainee guide;
- (d) Audiovisual materials;
- (e) Trainee worksheets and reference sheets;
- (f) Test;
- (g) Instructor comment sheet; and
- (h) Trainee comment sheet.

(2) A complete training materials packet, in hardcopy or digital format shall be provided to each instructor for each course.

(3) A training material packet, excluding subsection (1)(b), (d) and (g) of this section, shall be provided to each trainee for each course.

(4) Sufficient stocks of instructor and trainee material packets shall be maintained for each course to meet demand.

(5) Audiovisual equipment shall be available to each instructor.

Section 7. Enforcement. (1) Failure of any certified installer to comply with the requirements of KRS 211.350, 211.357(4) and (5), 902 KAR 10:081, 902 KAR 10:085, or this administrative regulation shall result in administrative action being taken.

(2) A minimum six (6) months probationary period shall be assigned to any certified installer who:

(a) Fails final inspection on any two (2) consecutive systems that require follow-up inspections before approval is granted;

(b) Backfills any system before final inspection is conducted and approval to backfill is given;

(c) Fails final inspection on any system that results in reconstruction of the system before approval can be given;

(d) Fails to place, cause to be placed, or fails to supervise placement of any required additional fill soil over an installed system;

(e) Fails to call for final inspection of any system;

(f) Fails to be present on the site anytime work is being performed on the system under construction;

(g) Fails to provide name, certification number, and notification of intent on application of permit when performing excavation and backfilling work on permitted homeowner installations; or

(h) Performs work on any system outside of the designated certification level.

(3) Probation may be assigned to a certified installer by the cabinet or by the certified inspector having local jurisdiction. Terms of the probationary period shall stipulate any restrictions, requirements, or additional training determined necessary to correct performance.

(4) For other violations, the provisions of KRS 211.357(4) and (5) relating to suspension or revocation of certification shall apply.

(5) In all instances of administrative action being taken for probation, suspension or revocation, a certified installer shall have

the right to request an administrative conference. The request shall be submitted in writing on form DFS-212 - Request for Conference, incorporated by reference in 902 KAR 1:400, to the local health department having jurisdiction or to the cabinet. All administrative conferences shall be conducted pursuant to 902 KAR 1:400.

(6) If immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or compel compliance with KRS 211.350(5), (7), (8), and (9), 211.357(4) and (5) or administrative regulations pursuant to those statutes, the cabinet or local health department concerned may maintain, in its own name, injunctive action against any person engaged in the construction, installation, or alteration of an on-site sewage disposal system.

(7) The cabinet shall be notified within two (2) business days of any administrative action taken by a local health department against any certified installer, so that other local health departments can be alerted to that installer's status.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 25, 2022

FILED WITH LRC: May 4, 2022 at 12:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 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 July 18, 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 July 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 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: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification process and standards for installers of on-site sewage disposal systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure persons seeking to install on-site sewage disposal systems meet the minimum competencies for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.357 authorizes the cabinet to establish a program to certify persons as installers of on-site sewage disposal systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all installers of on-site sewage disposal systems are properly trained and certified based on their level of experience.

(2) If 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

clarifies that probational and provisional certification are equal, clarifies that the fee for certification is to be paid to the Environmental Management Branch in the Department for Public Health, outlines the requirements to progress to the next level certification, and tiers the continuing education requirements for installers certified at the master level to be six (6) hours every two (2) years.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure those seeking certification to install on-site sewage disposal systems are aware of the requirements to progress to the next level certification, to ensure certified installers are aware of the continuing education requirements, and to clarify the annual certification fee requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.357 authorizes the cabinet to establish a program to certify persons as installers of on-site sewage disposal systems, to establish as a part of the certification program a means of issuing a probationary certification for installers of on-site sewage disposal systems, and to promulgate administrative regulations to establish a fee that shall be the total of the operational and administrative costs of the programs to the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure those certified to install on-site sewage disposal systems are properly trained for the level and type of system they propose to install.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are 1,540 certified septic system installers. On average the department certifies twenty-five (25) new installers on a yearly basis.

(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: Certified installers will need to be aware of the different certification levels and ensure they obtain the required number of continuing education credits based on their certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs to the certified installer will be dependent on the type of continuing education credits they obtain.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified installer will be incentivized to continuously seek opportunities to advance their certification level. Master level installers will benefit from a reduction in the continuing education requirements.

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

(a) Initially: The total operating costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in costs associated with this administrative regulation initially.

(b) On a continuing basis: There is no anticipated increase in costs on a continuing basis for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue received from the permitting fees are the source of funding for enforcement of this administrative regulation.

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

increased.

(9) TIERING: Is tiering applied? Tiering is applied. Installers who reach master level certification will only need six (6) hours of continuing education training every two (2) years while installers at the provisional, probationary, full, and advanced certification levels will need six (6) hours of continuing education training every year.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact local health departments and the Environmental Management Branch within the Department for Public Health.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.350 and 211.357.

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

How much 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 increase in the annual registration fee will generate an average revenue of \$69,300 in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The increase in the annual registration fee will generate an average revenue of \$70,425 in subsequent years.

(c) How much will it cost to administer this program for the first year? The total operating costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in costs associated with this administrative regulation initially.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated increase in costs on a continuing basis for 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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation will result in minor costs savings for the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will result in minor costs savings for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will result in minor costs to the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will result in minor costs to the regulated entities in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated

entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 1:082. Coverage provisions and requirements regarding rural health clinic services.

RELATES TO: KRS 205.510, 205.520, 205.622, 205.845.1, 309.080, 309.0831, 309.130, 311.840, 314.011, 319.010, 319.050, 319.053, 319C.010, 335.080, 335.100, 335.300, 335.500, 369.101 to 369.120, 42 C.F.R. 400.203, 42 C.F.R. 405.2401(b), 405.2412-405.2417, 405.2450, 405.2452, 405.2468, 431.17, 438.2, 440.20, 42 C.F.R. 491.1-491.11, 45 C.F.R. Part 164, 20 U.S.C. 1400, 21 U.S.C. 823, 29 U.S.C. 701, 42 U.S.C. 1395x(aa) and (hh)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid program coverage provisions and requirements relating to rural health clinic services.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established in 908 KAR 2:220.

(2) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(3)~~(2)~~ "Approved behavioral health practitioner" means an independently licensed practitioner who is:

- (a) A physician;
- (b) A psychiatrist;
- (c) An advanced practice registered nurse;
- (d) A physician assistant;
- (e) A licensed psychologist;
- (f) A licensed psychological practitioner;
- (g) A certified psychologist with autonomous functioning;
- (h) A licensed clinical social worker;
- (i) A licensed professional clinical counselor;
- (j) A licensed marriage and family therapist;
- (k) A licensed professional art therapist;
- (l) A licensed clinical alcohol and drug counselor; or
- (m) A licensed behavior analyst.

(4) "Approved behavioral health practitioner under supervision" means an individual under billing supervision of an approved behavioral health practitioner who is:

- (a)1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;
- 2. A certified psychologist working under the supervision of a board-approved licensed psychologist;
- 3. A marriage and family therapy associate;
- 4. A certified social worker;
- 5. A licensed professional counselor associate;
- 6. A licensed professional art therapist associate;
- 7. A licensed clinical alcohol and drug counselor associate;
- 8. A certified alcohol and drug counselor; or
- 9. A licensed assistant behavior analyst; and
- (b) Employed by or under contract with the same billing provider as the billing supervisor.

(5) "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-occurring Conditions" published by the American

Society of Addiction Medicine.

(6) "Certified alcohol and drug counselor" is defined by KRS 309.080(4).

(7) "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(8)~~(3)~~ "Community support associate" means a paraprofessional[an individual] who:

(a) meets the community support associate requirements established in 908 KAR 2:250[; and

(b) Has been certified by the Department for Behavioral Health, Intellectual and Developmental Disabilities as a community support associate].

(9) "Co-occurring disorder" means a mental health and substance use disorder.

(10)~~(4)~~ "Department" means the Department for Medicaid Services or its designee.

(11)~~(5)~~ "Enrollee" means a recipient who is enrolled with a managed care organization.

~~(6) "Face-to-face" means occurring:~~

~~(a) in person; or~~

~~(b) Via a real-time, electronic communication that involves two (2) way interactive video and audio communication.;~~

(12) "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(13)~~(7)~~ "Federal financial participation" is defined in 42 C.F.R. 400.203.

(14)~~(8)~~ "Homebound recipient" is defined by 42 C.F.R. 440.20(b)(4)(iv).

(15) "In-person" means a healthcare encounter occurring:

(a) Via direct contact and interaction between the individual and healthcare provider;

(b) At the same location; and

(c) Not via telehealth.

(16)~~(9)~~ "Intermittent nursing care" is defined by 42 C.F.R. 405.2401(b).

(17)~~(10)~~ "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(18)~~(11)~~ "Licensed behavior analyst" is defined by KRS 319C.010(6).

(19) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(7).

(20) "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(9).

(21)~~(12)~~ "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(22)~~(13)~~ "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(23)~~(14)~~ "Licensed professional art therapist" is defined by KRS 309.130(2).

(24)~~(15)~~ "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(25)~~(16)~~ "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(26)~~(17)~~ "Licensed professional counselor associate" is defined by KRS 335.500(4)~~(3)~~.

(27)~~(18)~~ "Licensed psychological associate" means:

(a) An individual who:

1. Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

2. Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or

(b) A certified psychologist.

(28)~~(19)~~ "Licensed psychological practitioner" means:

(a) An individual who meets the requirements established in KRS 319.053; or

(b) A certified psychologist with autonomous functioning.

(29)~~(20)~~ "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

VOLUME 48, NUMBER 12– JUNE 1, 2022

~~(30)~~~~(24)~~ "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

~~(31)~~~~(22)~~ "Marriage and family therapy associate" is defined by KRS 335.300(3).

~~(32)~~~~(23)~~ "Medically necessary" means that a covered benefit or service is necessary in accordance with 907 KAR 3:130.

~~(33)~~ "Medication assisted treatment" means the treatment of a substance use disorder with approved medications in combination with counseling, behavior therapies, and other supports.

~~(34)~~~~(24)~~ "Other ambulatory services" is defined by 42 C.F.R. 440.20(c).

~~(35)~~~~(25)~~ "Part-time nursing care" is defined by 42 C.F.R. 405.2401(b).

~~(36)~~~~(26)~~ "Physician" is defined by KRS 205.510~~(12)~~~~(14)~~ and 42 C.F.R. 405.2401~~(b)~~.

~~(37)~~~~(27)~~ "Physician assistant" is defined by KRS 311.840(3) and 42 C.F.R. 405.2401(b).

~~(38)~~~~(28)~~ "Recipient" is defined by KRS 205.8451(9).

~~(39)~~ "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(12).

~~(40)~~ "Registered behavior technician" means an individual who meets the following requirements by the Behavior Analyst Certification Board:

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

~~(b)~~ Have a high school diploma or its equivalent; and

~~(c)~~ Within six (6) months of hire for a new employee or within six (6) months of the effective date of this administrative regulation for an existing employee:

~~1.~~ Complete a training program that is:

~~a.~~ Approved by the Behavior Analyst Certification Board;

~~b.~~ Based on the current edition of the RBT Task List endorsed by the Behavior Analyst Certification Board; and

~~c.~~ Conducted by Behavior Analyst Certification Board certificants;

~~2.~~ Pass the Registered Behavior Technician Competency Assessment administered by a Behavior Analyst Certification Board certificant; and

~~3.~~ Pass the Registered Behavior Technician exam provided by an assistant assessor overseen by a Behavior Analyst Certification Board certificant.

~~(41)~~~~(29)~~ "Rural health clinic" or "RHC" is defined by 42 C.F.R. 405.2401(b).

~~(42)~~~~(30)~~ "State plan" is defined by 42 C.F.R. 400.203.

~~(43)~~~~(34)~~ "Visiting nurse services" is defined by 42 C.F.R. 405.2401(b).

~~(44)~~ "Withdrawal management" means a set of interventions aimed at managing acute intoxication and withdrawal based on the severity of the illness and co-occurring conditions identified through a comprehensive biopsychosocial assessment with linkage to addiction management services, and incorporated into a recipient's care as needed throughout the appropriate levels of care.

~~(45)~~ "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

Section 2. Covered Services Other Than Behavioral Health Services. The department shall cover the following medically necessary rural health clinic services furnished by a RHC that has been certified in accordance with 42 C.F.R. 491.1 through 491.11:

(1) Services pursuant to 42 U.S.C. 1395x(aa);

(2) Services provided by a physician if the physician:

(a) Complies with the physician responsibility requirements established by 42 C.F.R. 491.8(b); and

(b)1. Performs the services in a RHC; or

2. Is compensated under an agreement with a RHC for providing services furnished to a Medicaid eligible RHC patient in a location other than the RHC;

(3) Services provided by a physician assistant or advanced practice registered nurse who is employed by or receives compensation from the RHC if the services:

(a) Are furnished by a member of the RHC's staff who complies with the responsibility requirements established by 42 C.F.R. 491.8(c);

(b) Are furnished under the medical supervision of a physician except for services furnished by an APRN as these services shall not be required to be furnished under the medical supervision of a physician;

(c) Are furnished in accordance with a medical order for the care and treatment of a patient as prepared by a physician or an advanced practice registered nurse;

(d) Are within the provider's legally-authorized scope of practice; and

(e) Would be covered if furnished by a physician;

(4) Services or supplies furnished as incidental to services provided by a physician, physician assistant, or advanced practice registered nurse if the service or supply meets the criteria established in 42 C.F.R. 405.2413 or 42 C.F.R. 405.2415;

(5) Part-time or intermittent visiting nurse care and related supplies, except for drugs or biologicals, if:

(a) The RHC is located in an area where a determination has been made that there is a shortage of home health agencies pursuant to 42 C.F.R. 405.2417;

(b) The services are provided by a registered nurse or licensed practical nurse who is employed by or compensated for the services by the RHC; and

(c) The services are furnished to a homebound recipient under a written plan of treatment that is:

1. Established and reviewed at least every sixty (60) days by a supervising physician of the RHC; or

2. Established by a physician, physician assistant, or advanced practice registered nurse and reviewed and approved at least every sixty (60) days by a supervising physician of the RHC; or

(6) Other ambulatory services as established in the state plan.

Section 3. Behavioral Health Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for:

(a) A mental health disorder;

(b) A substance use disorder; or

(c) Co-occurring mental health and substance use disorders.

(2) The department shall cover, and a rural health clinic may provide, the following services:

(a) Behavioral health services provided by a licensed psychologist, licensed clinical social worker, or advanced practice registered nurse within the provider's legally authorized scope of service; or

(b) Services or supplies incidental to a licensed psychologist's or licensed clinical social worker's behavioral health services if the service or supply meets the criteria established in 42 C.F.R. 405.2452.

(3) In addition to the services referenced in subsection (2) of this section, the following behavioral health services provided by a rural health clinic shall be covered under this administrative regulation in accordance with the corresponding following requirements:

~~(a)~~ A screening provided by:

~~1.~~ A licensed psychologist;

~~2.~~ A licensed professional clinical counselor;

~~3.~~ A licensed clinical social worker;

~~4.~~ A licensed marriage and family therapist;

~~5.~~ A physician;

~~6.~~ A psychiatrist;

~~7.~~ An advanced practice registered nurse;

~~8.~~ A licensed psychological practitioner;

~~9.~~ A licensed psychological associate working under the supervision of a licensed psychologist;

~~10.~~ A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;

~~11.~~ A certified social worker working under the supervision of a licensed clinical social worker;

~~12.~~ A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;

~~13.~~ A physician assistant working under the supervision of a

(4)(a) A screening shall:

1. ~~Determine~~~~Be the determination of~~ the likelihood that an individual has a mental health disorder, a substance use disorder, or co-occurring disorders;

2. Not establish the presence or specific type of disorder;~~and~~

3. Establish the need for an in-depth assessment;~~and~~

4. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:

a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a treatment and service plan;~~and~~

4. Not include a psychological or psychiatric evaluation or assessment;

5. If being made for the treatment of a substance use disorder, utilize a multidimensional assessment that complies with the most current edition of the ASAM Criteria to determine the most appropriate level of care; and

6. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(c) Psychological testing shall~~include~~:

1. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities;~~and~~

2. Include an interpretation and a written report of testing results;

3. Be provided by a licensed:

a. Psychologist;

b. Psychological practitioner; or

c. Psychological associate working under the supervision of a licensed psychologist; and

4. Be in-person or via telehealth as appropriate pursuant to 907 KAR 3:170.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for an individual with a behavioral health disorder;

3. Shall be provided:

a. On-site at a rural health clinic;

b. As an immediate relief to the presenting problem or threat; and

c. In a one-on-one~~face-to-face, one-on-one~~ encounter between the provider and the recipient, which is delivered either in-person or via telehealth if appropriate pursuant to 907 KAR 3:170;

4. May include:

a. Verbal de-escalation, risk assessment, or cognitive therapy;

or

b. Further service planning including:

(i) Lethal means reduction for suicide; or

(ii) Substance use disorder or relapse prevention;~~and~~

5. Shall be followed by a referral to non-crisis services if applicable; and

6. Shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(e)1. Service planning shall:

a. Be provided in-person or via telehealth as appropriate pursuant to the most current version of The ASAM Criteria and 907 KAR 3:170;

b. Involve~~consist of~~ assisting a recipient in creating an individualized plan for services needed for maximum reduction of an intellectual disability and to restore the individual to his or her best possible functional level;

c. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

d. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed and signed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. ~~Be~~ May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

(f) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and~~or~~

b. Restoration of a recipient to the recipient's best possible functional level from a substance use disorder or a co-occurring disorder~~Recovery from a substance use disorder, mental health disorder, or co-occurring related disorders~~;

2. Consist of:

a. An in-person or via telehealth as appropriate pursuant to 907 KAR 3:170,~~A face-to-face,~~ one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functionality;~~and~~

4. Not exceed three (3) hours per day; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(g)1. Family outpatient therapy shall consist of an in-person, or via telehealth as appropriate pursuant to 907 KAR 3:170,~~a face-to-face~~ behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals, including multiple members from one (1) family, who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(h)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and~~or~~

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorder~~Recovery from a substance use disorder, mental health disorder, or co-occurring related disorders~~;

c.[b.] Consist of an in-person, or via telehealth as appropriate pursuant to 907 KAR 3:170,[a–face-to-face] behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

d.[c.] Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f.[d.] Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g.[e.] Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h.[f.] Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. A family outpatient therapy~~[The]~~ group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of a group receiving group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(i)1. Collateral outpatient therapy shall:

a. Consist of an in-person or appropriate telehealth, provided pursuant to 907 KAR 3:170,[a–face-to-face] behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's treatment plan;~~and~~

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age; and

c. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. Written consent by a parent or custodial guardian~~Consent~~ to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(j)1. Screening, brief intervention, and referral to treatment for a substance use disorder shall:

a.[4.] Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment;~~and~~

b.[2.] Consist of:

(i)[a.] Using a standardized screening tool to assess an individual for risky substance use behavior;

(ii)[b.] Engaging a recipient who demonstrates risky substance use behavior in a short conversation and providing feedback and advice; and

(iii)[c.] Referring a recipient to additional substance use disorder or co-occurring disorder services if the recipient is determined to need:

(i) Therapy; or

(ii) Other additional services to address substance use if the recipient is determined to need other additional services;

c. Be provided in-person or via telehealth as appropriate according to 907 KAR 3:170;

d. Be provided by:

(i) An approved behavioral health practitioner; or

(ii) An approved behavioral health practitioner under supervision.

2. A screening and brief intervention that does not meet criteria for referral to treatment may be subject to coverage by the department.

(k)1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:

a. An emotional disability,~~or~~ neurobiological disorder, or substance use disorder; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment services shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services (substance use disorder, mental health disorder, or co-occurring ~~mental health and substance use~~ disorders);

b. Have unified policies and procedures that:

(i) Address the program philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning; and

(ii) Have been approved by the recipient's local education authority and the day treatment provider;

c. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skill training;

(iii) Independent living skills that correlate to the age and development stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

d. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled breaks;

(iii) In coordination with the recipient's individualized education program~~individualized educational plan~~ if the recipient has an individualized education program~~individualized educational plan~~;

(iv) Under the supervision of a licensed or certified behavioral health practitioner or a behavioral health practitioner working under clinical supervision; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, a[an] RHC shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with subparagraph 2. of this subsection [(3)(k) of this section] and to coordinate the provision of services among team members;

b. The capacity to provide the full range of services as stated in subparagraphs 1 and 2 of this paragraph;

c. Demonstrated experience in serving individuals with behavioral health disorders, mental health disorders, and co-occurring disorders;

d. The administrative capacity to ensure quality of services;

e. A financial management system that provides documentation of services and costs;

f. The capacity to document and maintain individual case records; and

g. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program~~plan~~.

(l)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in community-integrated housing;

b. Be intended to ensure successful community living through

the utilization of skills training, cueing, or supervision as identified in the recipient's treatment plan;

c. Include:

(i) Reminding a recipient to take medications and monitoring symptoms and side effects of medications; or

(ii) Teaching parenting skills, teaching community resource access and utilization, teaching emotional regulation skills, teaching crisis coping skills, teaching how to shop, teaching about transportation, teaching financial management, or developing and enhancing interpersonal skills; and

d. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

2. To provide comprehensive community support services, ~~a~~[a] RHC shall have:

a. The capacity to employ staff authorized to provide comprehensive community support services in accordance with subsection (3)(l) of this section and to coordinate the provision of services among team members;

b. The capacity to provide the full range of comprehensive community support services as stated in subparagraph 1 of this paragraph;

c. Demonstrated experience in serving individuals with behavioral health disorders;

d. The administrative capacity to ensure quality of services;

e. A financial management system that provides documentation of services and costs; and

f. The capacity to document and maintain individual case records.

3. Comprehensive community support services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under supervision, except for a:

(i) Certified alcohol and drug counselor; or

(ii) Licensed clinical alcohol and drug counselor associate.

4. Support services for comprehensive community support services conducted by a behavioral health multi-specialty group or a behavioral health provider group by an individual working under the supervision of an approved behavioral health practitioner may be provided by a:

a. Community support associate; or

b. Registered behavioral technician under the supervision of a licensed behavioral analyst.

(m)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health disorder, substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current version of The ASAM Criteria for intensive outpatient level of care services;

d. Be provided at least three (3) hours per day at least three (3) days per week;

e. Be provided at least six (6) hours per week for adolescents; and

f. [d.] Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan.

2. During psycho-education, the recipient or family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, ~~a~~[a] RHC shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, other physician, physician's assistant, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) to one (1);

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with subparagraph 4.[subsection (3)(m)] of this paragraph[section] and to coordinate the provision of services among team members;

f. The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

g. Demonstrated experience in serving individuals with behavioral health disorders;

h. The administrative capacity to ensure quality of services;

i. A financial management system that provides documentation of services and costs; and

j. The capacity to document and maintain individual case records.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(n)1. Therapeutic rehabilitation program services shall:

a. Occur at the provider's site or in the community;

b. Be provided to an adult with a severe and persistent mental illness or to a child (under the age of twenty-one (21) years) who has a serious emotional disability;

c. Be designed to maximize the reduction of an intellectual disability and the restoration of the individual's functional level to the individual's best possible functional level; and

d. Not be a residential program.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skill; and

(v) Interpersonal skills; ~~and~~

c. Be delivered individually or in a group; and

d. Include:

(i) An individualized plan of care identifying measurable goals and objectives including discharge and relapse prevention planning;

(ii) Coordination of services the individual may be receiving; and

(iii) Referral to other necessary service supports as needed.

4. To provide therapeutic rehabilitation program services, ~~a~~[a] RHC shall:

a. Have the capacity to employ staff authorized to provide therapeutic rehabilitation program services in accordance with subsection (3)(n) of this section and to coordinate the provision of services among team members;

b. Have the capacity to provide the full range of therapeutic rehabilitation program services as stated in this paragraph;

c. Have demonstrated experience in serving individuals with mental health disorders;

d. Have the administrative capacity to ensure quality of services;

e. Have a financial management system that provides documentation of services and costs; and

f. Have the capacity to document and maintain individual case records.

5. Program staffing for a therapeutic rehabilitation program shall include:

a. Licensed clinical supervision, consultation, and support to direct care staff; and

b. Direct care staff to provide scheduled therapeutic activities, training, and support.

6. Therapeutic rehabilitation services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under supervision, except for a:

(i) Certified alcohol and drug counselor; or

(ii) Licensed clinical alcohol and drug counselor associate.

7. If not provided by an allowed practitioner pursuant to clause 6. of this subparagraph, support services for therapeutic rehabilitation services shall be conducted by a provider:

a. Working under the supervision of an approved behavioral health practitioner; and

b. Who is:

(i) An adult peer support specialist;

(ii) A family peer support specialist; or

(iii) A youth peer support specialist.

(o)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a substance use disorder to a recipient by sharing a similar substance use disorder in order to bring about a desired social or personal change;

(ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a substance use disorder to a parent or family member of a child sharing a similar substance use disorder in order to bring about a desired social or personal change;

(iii) An individual who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing a substance use disorder; or

(iv) A registered alcohol and drug peer support specialist who has been trained and certified in accordance with KRS 309.0831 and is a self-identified consumer of substance use disorder services who provides emotional support to others with substance use disorder to achieve a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Except for the engagement into substance use disorder treatment through an emergency department bridge clinic, be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care; and

g. Be designed to contribute directly to the recipient's individualized goals as specified in the recipient's plan of care.

2. To provide peer support services, a chemical dependency treatment center shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, 908 KAR 2:240, or KRS 309.0831;

c. Use an approved behavioral health practitioner to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members;

e. Have the capacity to provide ongoing continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients to provide no more than thirty (30) hours per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting to not exceed eight (8) individuals within any group at one (1) time.

(p)1. Partial hospitalization services shall be:

a. Short-term with an average of four (4) to six (6) weeks.

b. Less than twenty-four (24) hours each day;

c. An intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a substance use disorder or co-occurring disorders; and

d. Provided in-person or via telehealth as appropriate pursuant to the most recent version of The ASAM Criteria and 907 KAR 3:170.

2. Partial hospitalization may be provided to an adult or a minor.

3. Admission criteria for partial hospitalization shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the recipient.

4. A partial hospitalization program shall meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current version of The ASAM Criteria for partial hospitalization level of care services.

5. A partial hospitalization program shall consist of:

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy; or

d. Medication management.

6. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.

7.a. A rural health clinic's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction that are not Medicaid billable or reimbursable.

b. Services in a Medicaid eligible child's individualized education program shall be coverable under Medicaid.

8. Partial hospitalization shall be:

a. Provided for at least four (4) hours per day; and

b. Focused on one (1) primary presenting problem.

9. A partial hospitalization program operated by a rural health clinic shall:

a. Include the following personnel for the purpose of providing medical care:

(i) An advanced practice registered nurse, a physician assistant, or a physician available on site; and

(ii) A board-certified or board-eligible psychiatrist available for consultation; and

b. Have the capacity to:

(i) Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(ii) Employ required practitioners and coordinate service provision among rendering practitioners; and

(iii) Provide the full range of services included in the scope of partial hospitalization established in this paragraph.

(g)1. Withdrawal management services provided by a rural health clinic shall:

a. Be provided in-person or via telehealth as consistent with 907 KAR 3:170 for recipients with a substance use disorder or co-occurring disorder and incorporated into a recipient's care along the continuum of care as needed;

b. Meet service criteria in accordance with the most current version of the ASAM Criteria for withdrawal management levels in an outpatient setting; and

c. If provided in an outpatient setting, comply with 908 KAR 1:374, Section 2.

2. A recipient who is receiving withdrawal management

services shall meet the most current edition of diagnostic criteria for substance withdrawal management as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

3. Withdrawal management services in an outpatient setting shall be provided by:

- a. A physician;
- b. A psychiatrist;
- c. A physician assistant;
- d. An advanced practice registered nurse; or
- e. An approved behavioral health practitioner or behavioral health practitioner under supervision with oversight by a physician, advanced practice registered nurse, or physician assistant.

(r)1. Medication assisted treatment services shall be provided by an authorized prescribing provider who:

- a. Is:
 - (i) A physician;
 - (ii) An advanced practice registered nurse;
 - (iii) A physician assistant; or
 - (iv) A psychiatrist;

b. Meets standards established pursuant to 201 KAR 9:270 or 201 KAR 20:065;

c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products including any waiving or expansion of buprenorphine prescribing authority by the federal government; and

d. Has experience and knowledge in addiction medicine.

2. Medication assisted treatment supporting behavioral health services shall:

a. Be co-located within the same practicing site as the practitioner who maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products or via telehealth as appropriate pursuant to 907 KAR 3:170; or

b. Have agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in biopsychosocial dimensions of alcohol and other substance use disorders, such as:

- (i) A licensed behavioral health services organization;
- (ii) A multi-specialty group;
- (iii) A provider group; or
- (iv) An individual behavioral health practitioner.

3. Medication assisted treatment may be provided in a provider group or multi-specialty group operating in accordance with 908 KAR 1:374, Section 7.

4. A medication assisted treatment program shall:

a. Assess the need for treatment including:

(i) A full patient history to determine the severity of the patient's substance use disorder; and

(ii) Identifying and addressing any underlying or co-occurring diseases or conditions, as necessary;

b. Educate the patient about how the medication works, including:

- (i) The associated risks and benefits; and
- (ii) Overdose prevention;

c. Evaluate the need for medically managed withdrawal from substances;

d. Refer patients for higher levels of care if necessary; and

e. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.

(s)1. Applied behavior analysis services shall produce socially significant improvement in human behavior via the:

a. Design, implementation, and evaluation of environmental modifications;

b. Use of behavioral stimuli and consequences; or

c. Use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

2. Applied behavior analysis shall be based on scientific research and the direct observation and measurement of behavior and environment, which utilize contextual factors, establishing operations, antecedent stimuli, positive reinforcement, and other consequences to assist recipients in:

- a. Developing new behaviors;
- b. Increasing or decreasing existing behaviors; and

c. Eliciting behaviors under specific environmental conditions.

3. Applied behavior analysis services may include principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including applications of those principles, methods, and procedures to:

a. Design, implement, evaluate, and modify treatment programs to change the behavior of individuals;

b. Design, implement, evaluate, and modify treatment programs to change the behavior of individuals that interact with a recipient;

c. Design, implement, evaluate, and modify treatment programs to change the behavior of a group or groups that interact with a recipient; or

d. Consult with individuals and organizations.

4.a. Applied behavior analysis services shall be provided by:

(i) A licensed behavior analyst;

(ii) A licensed assistant behavior analyst;

(iii) An approved behavioral health practitioner with documented training in applied behavior analysis; or

(iv) An approved behavioral health practitioner under supervision with documented training in applied behavior analysis.

b. A registered behavior technician under the supervision of an appropriate practitioner pursuant to clause a. of this subparagraph may provide support services under this paragraph.

(4)(a) Laboratory services shall be reimbursable in accordance with 907 KAR 1:028 if provided by a RHC if:

1. The RHC has the appropriate Clinical Laboratory Improvement Amendments (CLIA) certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the RHC.

(b) Laboratory services may be administered, as appropriate, by:

1. An approved behavioral health practitioner; or

2. An approved behavioral health practitioner under supervision.

(5)(a) The requirements established in 908 KAR 1:370 shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health and substance use disorders.

(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.

(6) The extent and type of assessment performed shall depend upon the problem of the individual seeking or being referred for services.

(7) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(8)(a) Direct contact between a provider or practitioner and a recipient shall be required for each service except for a collateral service for a child under the age of twenty-one (21) years if the collateral service is in the child's plan of care.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(9) A billable unit of service shall be actual time spent delivering a service in an [a face-to-face] encounter.

(10) A service shall be:

(a) Stated in the recipient's treatment plan;

(b) Provided in accordance with the recipient's treatment plan;

(c) Provided on a regularly scheduled basis except for a screening or assessment; and

(d) Made available on a nonscheduled basis if necessary during a crisis or time of increased stress for the recipient.

(11) The following services or activities shall not be covered under this administrative regulation:

(a) A behavioral health service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

- a. Jail;
- b. Detention center; or
- c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the independent provider;

(c) A consultation or educational service provided to a recipient or to others;

(d) Collateral outpatient therapy for an individual aged twenty-one (21) years or older;

(e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of telehealth established pursuant to KRS 205.510(16) and implemented pursuant to 907 KAR 3:170[face-to-face];

(f) Travel time;

(g) A field trip;

(h) A recreational activity;

(i) A social activity; or

(j) A physical exercise activity group.

(12) A third party contract shall not be covered under this administrative regulation.

Section 4. Provision of Services. ~~A~~[A] RHC shall comply with the service provision requirements established by 42 C.F.R. 491.9.

Section 5. Immunizations. ~~A~~[A] RHC shall provide, upon request from a recipient, the following covered immunizations:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); ~~or~~

(4) Hemophilus B conjugate vaccine (HBCV);

(5) Hepatitis A;

(6) Meningococcal vaccines; or

(7) Meningococcal ACWY vaccine (MenACWY).

Section 6. Medical Necessity Requirement. To be covered pursuant to this administrative regulation, a service shall be:

(1) Medically necessary for the recipient; and

(2) Provided to a recipient.

Section 7. Noncovered Services. (1) The following services shall not be covered as rural health clinic services:

(a) Services provided in a hospital as defined in 42 U.S.C. 1395x(e);

(b) Institutional services;

(c) Housekeeping, babysitting, or other similar homemaker services;

(d) Services which are not provided in accordance with restrictions imposed by law or administrative regulation.

(2) A third party contract shall not be covered under this administrative regulation.

Section 8. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a service from an independent behavioral health service provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a rural health clinic.

Section 9. Protection, Security, and Records Maintenance Requirements for All Services. (1)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of ~~the~~ service and ~~the~~ signature of the individual who provided the service.

2. The individual who provided the service shall date and sign

the health record within seventy-two (72) hours of~~on~~ the date that the individual provided the service.

(2)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(3)(a) A provider shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. If requested, be disclosed to an authorized representative of:

a. The department; or

b. Federal government.

(c)1. Upon request, a provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; and

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1, of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 10. Documentation and Records Maintenance Requirements for Behavioral Health Services. (1) The requirements in this section shall apply to health records associated with behavioral health services.

(2) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance or Medicaid information;

f. Referral source and address of referral source;

g. Primary care physician and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider; and

j. The name of the informant and any other information deemed necessary by the independent provider to comply with the requirements of:

(i) This administrative regulation;

(ii) The provider's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment;

c. Disposition; and

d. Six (6) month review of a recipient's treatment plan each time a six (6) month review occurs;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the Cabinet for Health and Family Services

upon request;

3. Made available for inspection and copying by Cabinet for Health and Family Services' personnel;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient.

(3) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(4)(a) A provider's notes regarding a recipient shall:

1. Be made within seventy-two (72)~~forty-eight (48)~~ hours of the reconciliation of the record of each service visit; and

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the treatment plan if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional providing the service.

2. If services are provided by a practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(5) Immediately following a screening of a recipient, the provider shall perform a disposition related to:

(a) An appropriate diagnosis;

(b) A referral for further consultation and disposition, if applicable; and

(c)1. Termination of services and referral to an outside source for further services; or

2. Termination of services without a referral to further services.

(6)(a) A recipient's treatment plan shall be reviewed at least once every six (6) months.

(b) Any change to a recipient's treatment plan shall be documented, signed, and dated by the rendering provider.

(7)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Dated;

3. Titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering provider and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other nonreimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(8)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's treatment plan;

b. Final diagnosis of clinical impression; and

c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated

from receiving services shall be fully completed within ten (10) days following termination.

(9) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(10) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, if the recipient gives the provider written consent to do so, forward a copy or summary of the recipient's health record to the health care facility or other provider who is receiving the recipient.

(11)(a) If a provider's Medicaid program participation status changes as a result of voluntarily terminating from the Medicaid program, involuntarily terminating from the Medicaid program, a licensure suspension, or death of the provider, the health records of the provider shall:

1. Remain the property of the provider; and

2. Be subject to the retention requirements established in Section 9(2) of this administrative regulation.

(b) A provider shall have a written plan addressing how to maintain health records in the event of the provider's death.

Section 11. Medicaid Program Participation Requirements.

(1)(a) A participating RHC shall be currently:

1. Enrolled in the Kentucky Medicaid program in accordance with 907 KAR 1:672; and

2. Except as established in paragraph (b) of this subsection, participating in the Kentucky Medicaid program in accordance with 907 KAR 1:671.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid program.

(2)(a) To be initially enrolled with the department, a [a] RHC shall:

1. Enroll in accordance with 907 KAR 1:672; and

2. Submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as a [a] RHC.

(b) To remain enrolled and participating in the Kentucky Medicaid program, a [a] RHC shall:

1. Comply with the enrollment requirements established in 907 KAR 1:672;

2. Comply with the participation requirements established in 907 KAR 1:671; and

3. Annually submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as a [a] RHC to the department.

(3) A [A] RHC that has been terminated from federal participation shall be terminated from Kentucky Medicaid program participation.

(4) A participating RHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of a [a] RHC.

(5)(a) If a [a] RHC receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 12. Third Party Liability. A provider shall comply with KRS 205.622.

Section 13. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

VOLUME 48, NUMBER 12– JUNE 1, 2022

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
2. Identify each electronic signature for which an individual has access; and
3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
 - (b) Develop a consent form that shall:
 1. Be completed and executed by each individual using an electronic signature;
 2. Attest to the signature's authenticity; and
 3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
 - (c) Provide the department, immediately upon request, with:
 1. A copy of the provider's electronic signature policy;
 2. The signed consent form; and
 3. The original filed signature.

Section 14. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 15. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 16. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 25, 2022

FILED WITH LRC: April 26, 2022 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 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 July 18, 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 July 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 or Krista Quarles

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid program rural health clinic (RHC) services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions and requirements regarding Medicaid program RHC services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions and requirements regarding Medicaid program RHC services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing the coverage provisions and requirements regarding Medicaid program RHC services.

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

(a) How the amendment will change this existing administrative regulation: The amendments to the regulation define new terms "adult peer support specialist", "approved behavioral health practitioner", "approved behavioral health practitioner under supervision", "ASAM Criteria", "certified alcohol and drug counselor", "co-occurring disorder", "family peer support specialist", "in-person", "licensed clinical alcohol and drug counselor", "licensed clinical alcohol and drug counselor associate", "medication assisted treatment", "registered alcohol and drug peer support specialist", "registered behavior technician", "withdrawal management", and "youth peer support specialist". The regulation is further amended to combine the service description with the providers who can perform the service. This is consistent with recent changes made to the service descriptions in 907 KAR Chapter 15. The regulation is also amended to require compliance with the appropriate level of care of the ASAM Criteria when treating substance use disorder for several types of services. The regulation is also amended to allow for telehealth in several additional services, if the telehealth service is appropriate pursuant to 907 KAR 3:170. Services such as comprehensive community support services and therapeutic rehabilitation programs are expanded. New services of peer support, partial hospitalization, withdrawal management, medication assisted treatment, and applied behavior analysis are introduced and are now reimbursable when performed within rural health clinics. In addition, laboratory services are now allowed to be reimbursable if the RHC has the appropriate certificate. Finally, the documentation requirement for providers is being increased to within 72 hours of the date that the individual provided the service instead of on the same day that the service was provided.

(b) The necessity of the amendment to this administrative regulation: The amendments serve to synchronize and expand behavioral health services that can be provided by RHCs consistent with recent changes to 907 KAR Chapter 15.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing recent changes and service expansions to an additional population of behavioral health practitioners.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by complying with an approved Section 1115 waiver to implement the ASAM Criteria as well as implementing recent changes and service expansions for an additional population of behavioral health practitioners.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 295 rural health clinics will be affected by this amendment. Additionally, certain behavioral health professionals and practitioners will be impacted by this amendment. Finally, Medicaid recipients who qualify for substance use disorder services or the enhanced scope of behavioral health services will be affected by this amendment.

(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 expanded services are voluntary so no new actions are required. To provide the additional and enhanced behavioral health services permitted in this administrative regulation, some new provider types or licensure and certification requirements may be needed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated as expanding the scope of services is voluntary.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): RHCs will benefit by being authorized to provide more services. The expanded types of behavioral health practitioners/professionals will benefit by having more employment opportunities in which to provide services. Medicaid recipients will benefit by having enhanced access to behavioral health services including substance use disorder services.

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

(a) Initially: DMS does not anticipate additional costs in implementing this administrative regulation on an initial basis.

(b) On a continuing basis: On a continuing basis, DMS does not anticipate additional costs in implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX, and matching funds of agency and general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act.

(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. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment."

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal

requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation as will any RHC owned by a local government agency.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520(3), Section 1302(b)(1)(E) of the Affordable Care Act.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 revenue for the state or local government in the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not anticipate that this administrative regulation will generate revenue for the state or local government in subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? DMS does not anticipate that this administrative regulation will generate costs in the first year of implementation.

(d) How much will it cost to administer this program for subsequent years? DMS does not anticipate that this administrative regulation will generate costs in subsequent years of implementation.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated

entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities. DMS does anticipate that this amendment will result in additional practice opportunities for certain behavioral health providers.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)**

907 KAR 1:104. Reimbursement for advanced practice registered nurse services.

RELATES TO: KRS 205.520, 314.011, 42 C.F.R. 438.2, 42 U.S.C. 1396s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Department" means the Department for Medicaid Services or its designated agent.

(3) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(4) "Physician administered drug" or "PAD" means any rebateable covered outpatient drug that is:

(a) Provided or administered to a Medicaid recipient;

(b) Billed by a provider other than a pharmacy provider through the medical benefit, including a provider that is a physician office or another outpatient clinical setting; and

(c) An injectable or non-injectable drug furnished incident to provider services that are billed separately to Medicaid.

(5) "Provider group" means a group of at least two (2) individually licensed APRNs who:

(a) Are enrolled with the Medicaid program individually and as a group; and

(b) Share the same Medicaid group provider number.

(6) "Usual and customary charge" means the uniform amount the provider charges in the majority of cases for the service or procedure.

Section 2. Reimbursement. (1) The department's reimbursement under this administrative regulation shall be for a service or procedure:

(a) Covered pursuant to 907 KAR 1:102; and

(b) Provided by an APRN or APRN provider group that:

1. Meets the condition of participation requirements established in 907 KAR 1:102, Section 2; and

2. Is the billing provider for the service or procedure.

(2) Except as specified in subsection (3) of this section or Section 3 of this administrative regulation, the department shall reimburse for a service or procedure that is covered pursuant to 907 KAR 1:102 at the lesser of:

(a) The APRN's or APRN provider group's usual and customary charge for the service or procedure; [or]

(b) Seventy-five (75) percent of the amount reimbursable to a Medicaid participating physician for the same service or procedure

pursuant to 907 KAR 3:010; or

(c) For anesthesia and related services delivered by a certified registered nurse anesthetist, at one-hundred (100) percent of the amount reimbursable to a Medicaid participating physician for the same service or procedure pursuant to 907 KAR 3:010.

(3) The department's reimbursement for a behavioral health service covered pursuant to 907 KAR 15:010 that is provided by an APRN or APRN provider group that is the billing provider for the service shall be pursuant to 907 KAR 15:015.

Section 3. Reimbursement Limitations. (1) The department shall reimburse an APRN or APRN provider group:

(a) A three (3) dollar and thirty (30) cent fee for each vaccine administered to a Medicaid recipient under the age of nineteen (19) up to a maximum of three (3) administrations per APRN, per recipient, per date of service; and

(b) The cost of each vaccine administered in accordance with paragraph (a) of this subsection, except as established in subsection (2) of this section.

(2) The department shall not reimburse for the cost of a vaccine that is available free through the Vaccines for Children Program in accordance with 42 U.S.C. 1396s.

(3) The department shall reimburse for a PAD in accordance with 907 KAR 23:020.

(4)(a) Payment for a cast or splint applied in conjunction with a surgical procedure shall be included in the payment for the surgical procedure.

(b) Except as provided by paragraph (c) of this subsection, the department shall not reimburse for a cast or splint application for the same injury or condition within ninety (90) calendar days:

1. From the date of the surgical service; or

2. If surgery is not performed, from initial application of the cast or splint.

(c) The department shall reimburse for a second cast or splint applied for a subsequent injury or condition within ninety (90) calendar days of the first cast or splint application if the claim contains documentation demonstrating that the injury or condition occurred subsequent to the initial cast or splint application.

(d) Reimbursement for the application of a cast or splint associated with a surgical procedure shall be considered to include:

1. A temporary cast or splint, if applied by the same physician who performed the surgical procedure;

2. The initial cast or splint applied during or following the surgical procedure; and

3. A replacement cast or splint needed as a result of the surgical procedure if:

a. Provided within ninety (90) calendar days of the procedure by the same physician; and

b. Applied for the same injury or condition.

(5) Reimbursement for an anesthesia service provided during a procedure shall include:

(a) Preoperative and postoperative visits;

(b) Administration of the anesthetic;

(c) Administration of intravenous fluids, blood, or blood products incidental to the anesthesia or surgery;

(d) Postoperative pain management; and

(e) Monitoring services.

(6) The department's reimbursement for a laboratory service provided in an office setting shall include the fee for collecting and analyzing a specimen.

(7) A fee for a laboratory test requiring an arterial puncture or a venipuncture shall include the fee for the puncture.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 1:102; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement of services

VOLUME 48, NUMBER 12– JUNE 1, 2022

pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 6. Appeal Rights. An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 25, 2022

FILED WITH LRC: April 26, 2022 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 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 July 18, 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 July 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: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program.

(b) The necessity of this administrative regulation: KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing reimbursement provisions and requirements regarding services provided to Medicaid recipients who are not enrolled with a managed care organization by individual advanced practice registered nurses (APRNs) enrolled in the Medicaid program or APRN provider groups enrolled in the Medicaid program.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the administrative regulation to allow certified registered nurse anesthetist services and related services to be reimbursed at 100% of the amount on the Medicaid Physician Fee Schedule.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to expand reimbursement for nurse anesthetist services.

(c) How the amendment 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 nurse anesthetist services covered by the Medicaid Program.

(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 implementing reimbursement changes for nurse anesthetist services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation affects nurse anesthetists. Currently, there are 2,300 individual nurse anesthetists enrolled in Kentucky's Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to follow existing reimbursement provisions and service policy requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will receive a 25% higher reimbursement for fee-for-service Medicaid services.

(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 implement this administrative regulation.

(b) On a continuing basis: There are no ongoing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3)

(3) Estimate the effect of this administrative regulation on the

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

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

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

(c) How much will it cost to administer this program for the first year? There are no costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year. This administrative regulation will result in higher reimbursement for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in subsequent years. This administrative regulation will result in higher reimbursement for regulated entities.

(c) How much will it cost the regulated entities for the first year? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years? DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities. DMS anticipates that this amendment will result in additional reimbursement for CRNAs.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(19); 42 U.S.C. 1396a(a)(30); 42 C.F.R. 447.26 and 42 C.F.R. 447.204.

(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)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients. 42 U.S.C. 1396a(a)(30) requires Medicaid program payments to be consistent with efficiency, economy, and quality of care and sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the same geographic area. 42 C.F.R. 447.204 requires Medicaid reimbursement to be sufficient to enlist enough providers to ensure that services are available to Medicaid recipients at least to the extent that they are available to the general population.

(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.

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*.

**STATE BOARD OF ELECTIONS
(New Administrative Regulation)**

31 KAR 3:031. Voting precinct and address of overseas voter whose last place of residence in the Commonwealth is no longer a recognized residential address.

RELATES TO: KRS 117A.010(1)(e), 117A.040

STATUTORY AUTHORITY: KRS 117.015(1)(a), KRS 117A.030(2), 117A.040(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117A.040(2) requires the State Board of Elections to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A. This administrative regulation establishes the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address.

Section 1. Definition. "Overseas voter" is defined by KRS 117A.010(6).

Section 2. Voting Precinct and Address of Overseas Voter Whose Last Place of Residence in the Commonwealth is No Longer a Recognized Residential Address. If the last place of residence in the Commonwealth of Kentucky of an overseas voter who is eligible to vote in the Commonwealth, or the last place of residence of the parent or legal guardian of a voter described by KRS 117A.010(1)(e), is no longer a recognized residential address, the county clerk shall:

(1) In consultation with federal, state and local government agencies, as necessary, determine and designate in the statewide voter registration database the voting precinct, school board district, city, and ward, if any, in which the voter's last place of residence, or the last place of residence of the parent or legal guardian of a voter described by KRS 117A.010(1)(e), would have been located if the address were still a recognized residential address; and

(2) Designate the voter's residential address in the statewide voter registration database as "Overseas."

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a voting precinct and voter registration address for overseas voters whose last place of residence in the Commonwealth is no longer a recognized residential address.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given KRS 117A.040(2) requires the State Board of Elections to promulgate administrative regulations covering the procedures under KRS 117A.040 for assigning an address for voting purposes for an overseas voter whose last place of residence is no longer a recognized residential address.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117A.040(2).

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all the State Board of Elections, the office of the Secretary of State, county clerks, and overseas voters as defined by KRS 117A.010(6).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, county clerks will need to determine and designate in the statewide voter registration database the voting precinct, school board district, city, and ward, if any, in which the voter's last place of residence, or the last place of residence of the parent or legal guardian of a voter described by KRS 117A.010(1)(e), would have been located if the address were still a recognized residential address. The State Board of Elections and Secretary of State will need to make sure that overseas voters are aware of this regulation. Overseas voters will have to take no action outside of providing the address.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new

administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections and the office of the Secretary of State will be impacted by this administrative regulation. At the local level, county clerks 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 117A.040 requires and authorizes the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

STATE BOARD OF ELECTIONS (New Administrative Regulation)

31 KAR 4:071. Recanvass procedures.

RELATES TO: KRS 117.305, 118.425, 242.120

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.305(5), (6), (7), 242.120(3), (4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.305(5) and KRS 242.120(3) require the State Board of Elections to prescribe forms to be used by county boards of elections to report all recanvassed votes, KRS 117.305(6) and KRS 242.120(4) require that the board promulgate administrative regulations to set reporting standards for recanvass reports, and KRS 117.305(7) and KRS 242.120(5) require that the board promulgate administrative regulations to establish the proper procedures for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky. This administrative regulation establishes the reporting forms to be used in the event of a recanvass, reporting standards for an election if a recanvass is requested and received in a timely manner, and establishes the proper procedures for conducting a recanvass on the approved voting systems in use in Kentucky.

Section 1. (1) The Recanvass of Official Count and Record of Election Totals form, SBE 49A, shall be used by the county board of elections to report all recanvassed votes, except for local option elections.

VOLUME 48, NUMBER 12– JUNE 1, 2022

(2) The Recanvass of Official Count and Record of Election Totals for Local Option Election form, SBE 49B, shall be used by the county board of elections to report recanvassed votes for local option elections.

(3) The county board of elections shall state the name of the county in which the recanvass is being conducted, the date of the report, the date of the election, the office for which the recanvass is being made, the name of each candidate for the office being recanvassed, and the machine votes, absentee votes, provisional votes and total votes for each candidate. The report shall be signed by each member of the county board of elections.

(4) For a recanvass of a local option election, the county board of elections shall state the name of the county in which the recanvass is being conducted, the date of the report, the date of the local option election, the proposition for which the recanvass is being made, the names of the leaders of the committees favoring or opposing the proposition being recanvassed, and the machine votes, absentee votes, and vote totals for "yes" or "no" votes. The report shall be signed by each member of the county board of elections.

Section 2. (1) The county board of elections shall file its recanvass report, SBE 49A, immediately upon completion of the recanvass for those vote totals reported to the Secretary of State, pursuant to KRS 118.425(3).

(2) The county board of elections shall file its recanvass report, SBE 49A, immediately upon completion of the recanvass for the vote totals reported to the county clerk, pursuant to 118.425(2).

(3) The county board of elections shall file its recanvass report for a local option election, SBE 49B, immediately upon completion of the recanvass for the vote totals reported to the county clerk, pursuant to KRS 242.110.

Section 3. If KRS 117.305(1) or KRS 242.120(2)(a) requires a recanvass, the provisions established in this section shall apply.

(1) In a general election, the county board of elections shall only check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

(2) In a partisan primary, the county board of elections shall only check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate of the same political party seeking the same office.

(3) In a nonpartisan election, the county board of elections shall only check and tabulate the votes of the candidate requesting a recanvass and each opposing candidate seeking the same office.

(4) In a local option election, the county board of elections shall check and tabulate the "yes" and "no" votes.

Section 4. A county board of elections shall recanvass the votes recorded depending on the machine and voting method utilized, as follows:

(1) If an electronic voting system with a central tabulation system is used, the recanvass shall be taken:

(a) By clearing the system, such as by setting the tabulation system to zero and retabulating the votes recorded on the memory cartridges on election day by using the central tabulation system; or

(b) By comparing the results printout printed from each voting machine on election day with the county-wide recapitulation sheet.

(2) If an electronic voting system without a central tabulation system is used, the recanvass shall be taken by comparing the results printout printed from each voting machine on election day with the county-wide recapitulation sheet.

(3) Paper ballots, which were judged to be valid by the county board of elections on election day and which were not counted using a central tabulation system but were hand-counted on election day, shall be recanvassed by utilizing the same procedure actually used to count those paper ballots on election day following the procedures for the uniform definition of a vote established by 31 KAR 6:030.

Section 5. Incorporation by Reference. (1) The following

material is incorporated by reference:

(a) "Recanvass of Official Count and Record of Elections Totals", SBE 49A, 04/22; and

(b) "Recanvass of Official Count and Record of Elections Totals for Local Option Election", SBE 49B, 04/22.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reporting forms to be used in the event of a recanvass, reporting standards for an election if a recanvass is requested and received in a timely manner, and establishes the proper procedures for conducting a recanvass on the approved voting systems in use in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given KRS 117.305(5) and KRS 242.120(3) require the State Board of Elections to prescribe forms to be used by county boards of elections to report all recanvassed votes, KRS 117.305(6) and KRS 242.120(4) require that the board promulgate administrative regulations to set reporting standards for recanvass reports, and KRS 117.305(7) and KRS 242.120(5) require that the board promulgate administrative regulations to establish the proper procedures for conducting a recanvass for each type of voting system approved by the board and in use in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.305(5), 242.120(3), 117.305(6), 242.120(4), 117.305(7), and 242.120(5).

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all

the State Board of Elections and county boards of election.

(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 State Board of Elections will need to make available the required forms; county boards of election will need to complete and submit them.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, county boards of election 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 117.305(5), KRS 242.120(3), KRS 117.305(6), KRS 242.120(4), KRS 117.305(7), and KRS 242.120(5) require and authorize the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate

any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

STATE BOARD OF ELECTIONS (New Administrative Regulation)

31 KAR 4:131. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically.

RELATES TO: KRS 117.085, 117.086, 117A.030, 117A.080, 117A.120, 117A.130, 52 U.S.C. 20302

STATUTORY AUTHORITY: KRS 117.015(1)(a), KRS 117.079, 117.086(1), 117A.030(2), (4)-(6), 117A.130, 52 U.S.C. 20302(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee

voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. KRS 117.086(1) authorizes the State Board of Elections to promulgate administrative regulations establishing security requirements for the transmission of voted absentee ballots. 52 U.S.C. 20302(e) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 117A.030(4) requires the State Board of Elections to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A. KRS 117A.030(5) requires the State Board of Elections to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth. KRS 117A.030(6) requires the State Board of Elections to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot. KRS 117A.130 requires the State Board of Elections, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A. This administrative regulation establishes the procedures for the county clerk to follow when transmitting a military-overseas ballot to a covered voter via facsimile or electronically and for a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporates by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implements the electronic free-access system pursuant to KRS 117A.130.

Section 1. Definitions. (1) "Covered voter" is defined by KRS 117A.010(1).

(2) "Federal postcard application" is defined by KRS 117A.010(3).

(3) "Instructions to Voter" means the Instructions for Voting to a Covered Voter Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot, SBE 46A.

(4) "Military-overseas ballot" is defined by KRS 117A.010(5).

(5) "Transmission sheet" means the Official Election Materials – Electronic Transmission Sheet prescribed by the Federal Voting Assistance Program.

Section 2. Delivering a Military-Overseas Ballot to a Covered Voter Via Facsimile or Electronically. (1) If the county clerk receives a properly completed federal postcard application from a covered voter who is eligible to vote in the jurisdiction and who requests that balloting materials be transmitted to the covered voter via facsimile or electronically, then for each election in which the covered voter is eligible to vote, the county clerk shall:

(a) Prepare a copy of the military-overseas ballot and mark the original, blank military-overseas ballot, "Faxed to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter via facsimile, or "Electronically Transmitted to Covered Voter," if the covered voter requested the military-overseas ballot to be transmitted to the covered voter electronically;

(b) Complete the county clerk's portion of the Instructions to Voter;

(c) If the covered voter has requested that the blank absentee ballot be transmitted through the Federal Voting Assistance Program, complete the Transmission Sheet; and

(d) Transmit the copy of the military-overseas ballot, Instructions to Voter, Voter Verification and Declaration, Voter Assistance Form, and Transmission Sheet, if the covered voter has requested that the military-overseas ballot be transmitted through the Federal Voting Assistance Program, to the covered voter via the method requested by the covered voter.

(2) The original blank military-overseas ballot shall be retained and not reused.

(3) A properly completed federal postcard application shall be treated as an application for a military-overseas ballot for all elections held after the date of the application through the next regular election or December 31 of the year of the application, whichever is later, unless the covered voter specifies a shorter time period.

Section 3. Ballot Security Requirements for Returning a Military-Overseas Ballot Transmitted to a Covered Voter Via Facsimile or Electronically. When a covered voter receives a military-overseas ballot via facsimile or electronically:

(1) If the covered voter requires assistance in voting, the covered voter and the person who assists the covered voter shall complete the Voter Assistance Form, except the "Section to be Completed by Precinct Election Officer";

(2) The covered voter shall mark the military-overseas ballot and seal it in an envelope;

(3) The covered voter shall complete and sign the Voter Verification and Declaration;

(4) The covered voter shall place the Voter Verification and Declaration, Voter Assistance Form, if the voter received assistance in voting, and the envelope containing the military-overseas ballot in a separate envelope and seal it;

(5) The covered voter shall print the covered voter's name, voting address, and precinct number on the back of the outer envelope;

(6) The covered voter shall sign across the back flap of the outer envelope;

(7) The covered voter shall print "Absentee Ballot" on the front of the outer envelope, without obstructing the address area; and

(8) The covered voter shall mail the envelope to the county clerk.

Section 4. Electronic Free-Access System. Each county clerk shall either participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received.

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

(a) "Instructions for Voting to a Covered Voter Who Has Been Faxed or Electronically Transmitted a Military-Overseas Ballot", SBE 46A, rev. July 2014;

(b) "Voter Assistance Form", SBE 31, 04/2022; and

(c) "Voter Verification and Declaration", SBE 46B, rev. July 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Filed with the concurrence of the Attorney General

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

July 26, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the county clerk to follow when transmitting a military-overseas ballot to a covered voter via facsimile or electronically and for a covered voter to follow when filling out and returning a military-overseas ballot that was transmitted to the covered voter via facsimile or electronically, incorporates by reference standardized absentee-voting materials and a declaration to be used by covered voters, and implements the electronic free-access system pursuant to KRS 117A.130.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010; 52 U.S.C. 20302(e) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters; KRS 117A.030(4) requires the State Board of Elections to establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information authorized under KRS Chapter 117A; KRS 117A.030(5) requires the State Board of Elections to develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in the Commonwealth; KRS 117A.030(6) requires the State Board of Elections to prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of a military-overseas ballot; KRS 117A.130 requires the State Board of Elections, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot has been received.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS

117A.010. KRS 117.086(1) authorizes the State Board of Elections to promulgate administrative regulations establishing security requirements for the transmission of voted absentee ballots. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.079, 117A.030(4), 117A.030(5), 117A.030(6), 117A.130

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all the State Board of Elections, county clerks, covered voters as defined by KRS 117A.010(1), and those who may assist covered voters.

(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 State Board of Elections and county clerks will need to make available the required items; covered voters and those that may assist them will need to take the described steps to receive and return a ballot.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, county clerks 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 117.015(1)(a), KRS 117.079, KRS 117.086(1), 52 U.S.C. 20302(e), and KRS 117A.130 require and authorize the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a

major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

**STATE BOARD OF ELECTIONS
(New Administrative Regulation)**

31 KAR 4:141. Submission of the federal postcard application via electronic mail.

RELATES TO: KRS 116.045(4)(e), 117.079, 117.085, 117A.030(4), 117A.050(3), 117A.060(3), 52 U.S.C. 20302(e)

STATUTORY AUTHORITY: KRS 116.045(4)(e), 117.079, 117.086(1), 52 U.S.C. 20302(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 52 U.S.C. 20302(e) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters. KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation. KRS 117.086(1) authorizes the board to promulgate administrative regulations establishing security requirements for the transmission of voted absentee ballots. This administrative regulation authorizes covered voters to submit federal postcard applications via electronic mail and establishes the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail.

Section 1. Definitions. (1) "Covered voter" is defined by KRS 117A.010(1).

(2) "Federal postcard application" is defined by KRS 117A.010(3).

(3) "Military-overseas ballot" is defined by KRS 117A.010(5).

Section 2. County Clerk's Electronic Mailing Address. The county clerk shall use the county clerk's electronic mailing address provided or recognized by the Kentucky Department of Transportation to send to and receive from covered voters: voter registration applications, military-overseas ballot applications, military-overseas ballots, and related voting, balloting, and election information.

Section 3. Federal Postcard Applications Submitted Via Electronic Mail. (1) A covered voter may submit a federal postcard application to the county clerk via electronic mail to register, reregister, and to apply for a military-overseas ballot.

(2) The county clerk shall treat a federal postcard application submitted by a covered voter via electronic mail in the same manner as a federal postcard application submitted via the electronic transmission system established under KRS 117A.030(4).

Filed with the concurrence of the Attorney General

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation authorizes covered voters to submit federal postcard applications via electronic mail and establishes the procedures for the county clerk to follow when a federal postcard application is submitted via electronic mail.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010; 52 U.S.C. 20302(e) requires the states to provide not less than one (1) means of electronic communication for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the state to request voter registration applications and absentee ballot applications, for use by the state to send voter registration applications and absentee ballot applications, and for the purpose of providing related voting, balloting, and election information to uniformed services voters and overseas voters; KRS 116.045(4)(e) authorizes the State Board of Elections to approve methods of registration for any person to register to vote or change his or her party affiliation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. KRS 117.086(1) authorizes the board to promulgate administrative regulations establishing security requirements for the transmission of voted absentee ballots. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.079 and 52 U.S.C. 20302(e).

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

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

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

(c) How the amendment conforms to the content of the

authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

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 will affect all the State Board of Elections, county clerks, and covered voters as defined by KRS 117A.010(1).

(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 State Board of Elections will need to make clerks and covered voters aware of the availability of the process. County clerks will need to make available the email system. Covered voters will need to submit the applications via email.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, county clerks 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 117.015(1)(a), KRS 117.079, 52 U.S.C. 20302(e), KRS 116.045(4)(e), and KRS 117.086(1) require and authorize the actions taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 4:196. Consolidation of Precincts and Precinct Election Officers.

RELATES TO: KRS 117.066
STATUTORY AUTHORITY: KRS 117.015(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.066(3) requires the State Board of Elections to promulgate administrative regulations to provide for a form on which a county board of elections may petition the State Board of Elections to allow for the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote. This administrative regulation establishes that form.

Section 1. A county board of elections shall petition the State Board of Elections to allow the consolidation of precincts and the consolidation of precinct election officers at any voting location where voters of more than one (1) precinct vote, by filing with the State Board of Elections, the "Petition to Consolidate Precincts and Precinct Election Officers" Form SBE 74 no later than ninety (90) days before a primary or general election, or ten (10) days after a proclamation is issued under KRS 118.710 or 118.720, or a writ of election is issued under KRS 118.730. The State Board of Elections shall reserve the right to request, at any time, from any county, a resubmission of any petition to consolidate precincts and precinct election officers.

Section 2. The submission of Form SBE 74 shall be accompanied by no less than one map scalable to a sheet of 8.5 x 11 inch paper of the county showing the location of any consolidated precincts comprising a county-wide vote center.

Section 3. Incorporated by Reference. (1) Petition to Consolidate Precincts and Precinct Election Officers, Form SBE 74, 04/2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the form used by county board of elections to petition the State Board of Elections to allow

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

the consolidation of precincts and the consolidation of precinct officers at any voting location where voters of more than one (1) precinct vote, as required by KRS 117.066(3).

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations under KRS 117.066

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.066(3), as amended by Kentucky Acts Chapter 197.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all county boards of election that wish to consolidate precincts and precinct election officers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, a county board of elections will need to complete and submit a form to the State Board of Elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost only the amount necessary to print a standard form and transmit it to the State Board through conventional means.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit county boards of election by standardizing the procedure by which precincts and precinct election officers are consolidated.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 74.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the Form SBE 74 that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this

administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, all local boards of elections 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. KRS117.066(3), as amended by Kentucky Acts Chapter 197, requires and authorizes the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

**STATE BOARD OF ELECTIONS
(New Administrative Regulation)**

31 KAR 4:201. Chain of custody for records during an election contest.

RELATES TO: KRS 120.205, 120.215

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 120.205 and KRS 120.215 require the State Board of Elections to promulgate administrative regulations to provide for a form on which documents any individuals transporting all voting equipment, ballots, boxes, precinct rosters, and other voting records related to an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly. This administrative regulation establishes that form.

Section 1. In the event that a board is established under KRS 120.205 or KRS 120.215 to try a contested election of a Governor and Lieutenant Governor or a member of the General Assembly, the possession of all components of a voting system, ballots, ballot boxes, precinct rosters, and any other voting records sent for by the board shall not transfer unless documented in writing on Form SBE 75, "Election Contest Chain-of-Custody."

Section 2. Incorporated by Reference. (1) Election Contest Chain-of-Custody, Form SBE 75, 04/2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on July 26, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the form which documents any individuals transporting all voting equipment, ballots, boxes, precinct rosters, and other voting records related to an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly, as required by KRS 120.205 and KRS 120.215.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations under KRS 120.205 and KRS 120.215.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 120.205 and KRS 120.215, as amended by Kentucky Acts Chapter 197.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect those involved in the administration of an election contest involving an election of a Governor and Lieutenant Governor or a member of the General Assembly

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, those transporting election materials will need to document themselves on a standardized form anytime the materials are transferred.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost only the amount necessary to print a standardized form through conventional means.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit those involved in administering an election contest by providing the complete history of the movement of any related election materials.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 75.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the Form SBE 75 that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will

be used in 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: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Elections and the General Assembly will be impacted by this administrative regulation, as well as any law enforcement agency requested to transport the election materials required for the contest.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 120.205 and KRS 120.215, as amended by Kentucky Acts Chapter 197, require and authorize the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first

year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 4:210. Establishment of risk-limiting audit pilot program.

RELATES TO: KRS 117.383

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117.383(8)-(9) require the State Board of Elections to promulgate administrative regulations related to the audit of elections and specifically calls for the establishment of a risk-limiting audit pilot program. This administrative regulation establishes a working-group to conduct and report on such a pilot program.

Section 1. Beginning March 2022 there shall be a working-group formed to establish recommendations for post-election audits in the counties of the Commonwealth. The working-group shall consist of members representing the State Board of Elections, the office of the Secretary of State, at least six (6) county clerks, an individual recognized to be an election auditing expert, and any other individuals the working-group may desire to include. The working-group shall, in the six (6) counties represented on the working-group, conduct a risk-limiting audit pilot program during the 2022 primary nomination of candidates and regular election. The working-group shall report any results, recommendations, or findings, regarding the implementation of risk-limiting audits to the State Board of Elections following the 2022 primary nomination of candidates and regular election.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 29, 2022

FILED WITH LRC: April 29, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be

cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a working-group to conduct and report on a risk-limiting audit pilot program for the 2022 primary and general elections.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations under KRS 117.383.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.383, as amended by Kentucky Acts Chapter 197.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all the State Board of Elections, the office of the Secretary of State, at least six (6) county clerks, and any other individuals that may participate in the working-group.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, the members of the working-group will need to participate in as-scheduled meetings and produce findings after the primary and general elections of 2022.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: Any continuing cost would only come at the recommendation of the working-group and further implementation through companion administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections and the office of the Secretary of State will be impacted by this administrative regulation. At the local level, at least six (6) county clerks 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 117.383, as amended by Kentucky Acts Chapter 197, requires and authorizes the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State

Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

**STATE BOARD OF ELECTIONS
(New Administrative Regulation)**

31 KAR 5:011. Use of the federal write-in absentee ballot.

RELATES TO: KRS 117.079, 117.086(3), 117A.050(2), 117A.060(3), 117A.100, 117A.130, 117A.160(1), 52 U.S.C. 20302
STATUTORY AUTHORITY: KRS 117.079, 117A.030(2), 117A.130, 52 U.S.C. 20302(a)(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010. 52 U.S.C. 20302(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for federal office. KRS 117A.130 requires the State Board of Elections, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A. This administrative regulation establishes the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130.

Section 1. Definitions. (1) "Covered Voter" is defined by KRS 117A.010(1).

(2) "Federal write-in absentee ballot" is defined by KRS 117A.010(4).

(3) "Military-overseas ballot" is defined by KRS 117A.010(5).

Section 2. Suspension of Provisions of 31 KAR 6:030. The requirements of 31 KAR 6:030, Uniform Definition of a Vote, Section 5(2)(a) and Section 6(1), (2), and (9), shall be suspended for the purposes of this administrative regulation.

Section 3. Receipt of Federal Write-in Absentee Ballot. Upon receiving a federal write-in absentee ballot, the county clerk shall:

(1) Not open the inner security envelope;

(2) Examine the voter's declaration/application accompanying the federal write-in absentee ballot to determine whether it was submitted by a covered voter for the purpose of registering to vote or requesting an absentee ballot;

(3) If the voter's declaration/application accompanying the federal write-in absentee ballot was submitted by a covered voter for the purpose of registering to vote or requesting an absentee ballot, process the application in the same manner as a federal postcard application;

(4) Enclose the voter's declaration/application accompanying the federal write-in absentee ballot and the inner security envelope in a separate envelope and label the outer envelope "FWAB"; and

(5) Deposit the outer envelope in a locked ballot box pursuant to KRS 117.086(3).

Section 4. Receipt of State Ballot Overrides Federal Write-in Absentee Ballot. (1) The federal write-in absentee ballot shall remain in the locked ballot box pursuant to KRS 117.086(3) and not be opened until after the deadline for receipt of the state absentee ballot.

(2) If the county clerk receives no later than the deadline for receipt of the state absentee ballot a valid and voted state absentee ballot from a covered voter from whom the county clerk also receives a federal write-in absentee ballot, the county clerk shall not unseal the inner security envelope containing the federal write-in absentee ballot and shall write on the inner security envelope containing the federal write-in absentee ballot, "Cancelled because state absentee ballot received."

Section 5. Electronic Free-Access System. Each county clerk shall either participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY:

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Taylor Brown, General Counsel, 40 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation establishes the procedures for the use of the federal write-in absentee ballot in elections in Kentucky and implements the electronic free-access system pursuant to KRS 117A.130.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that: KRS 117.079 requires the State Board of Elections, as circumstances warrant and with the concurrence of the Attorney General, to promulgate necessary administrative regulations to preserve the absentee voting rights of residents of Kentucky who are covered voters as defined in KRS 117A.010; 52 U.S.C. 20302(a)(3) requires states to permit absent uniformed service voters and overseas voters to use federal write-in absentee ballots in general elections for federal office; KRS 117A.130 requires the State Board of Elections, in coordination with local election officials, to implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. KRS 117A.030(2) authorizes the State Board of Elections to promulgate the administrative regulations necessary to implement KRS Chapter 117A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of KRS 117.079 and 52 U.S.C. 20302(a)(3).

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect all the State Board of Elections and county clerks.

(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 State Board of Elections will need to maintain an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted and whether the voter's military-overseas ballot has been received. County clerks will need to participate in the electronic free-access system established by the State Board of Elections or establish a local electronic free-access system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will result in the entities involved incurring only nominal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit the entities involved in that they will be able to further guarantee free and fair elections in the Commonwealth.

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

(a) Initially: The expected cost of the implementation of this administrative regulation for the State Board of Elections will be nominal.

(b) On a continuing basis: The expected continuing cost of this administrative regulation for the State Board of Elections will be nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: It is expected that implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is recommendations for uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? At the state level, the State Board of Elections will be impacted by this administrative regulation. At the local level, county clerks 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 117.015(1)(a), KRS 117.079, 52 U.S.C. 20302(a)(3), and KRS 117A.030(2) require and authorize the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

**STATE BOARD OF ELECTIONS
(New Administrative Regulation)**

31 KAR 5:026. Ballot standards and election security.

RELATES TO: KRS 117.001, 117.085, 117.086, 117.087, 117.145, 117.225, 117.228

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. Several Kentucky Revised Statutes require the State Board of Elections to promulgate administrative regulations that provide for measures that establish standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner. This administrative regulation provides for those measures.

Section 1. In addition to the requirements for printed ballots outlined in KRS 117.145, ballots caused to be printed by the county clerk of each county shall meet quality and size standards specific to the voting systems certified by both the State Board of Elections and the United States Election Assistance Commission.

Section 2. The outer envelope of all mail-in absentee ballots shall bear a barcode or other label that is unique to the individual voter and capable of being read by an electronic optical scanner. The unique barcode or label for each mail-in absentee ballot outer envelope shall be issued by the State Board of Elections.

Section 3. Upon the time of certification of each candidate and each question to be voted upon, all pre-printed paper ballots shall be secured by the county clerk of each county, under lock and key, in an area under the direct control of the county clerk and approved

by the county board of elections. The possession of all pre-printed ballots shall be accounted for on SBE Form 76, "Ballot Reconciliation Statement." Upon the need for paper ballots to be printed at a county clerk's office, an accounting of the printed ballots shall be made on either the SBE Form 76, "Ballot Reconciliation Statement" or by the printing equipment. Upon the transfer of ballots from the area under the direct control of the county clerk to a polling location, the transfer shall be noted on the SBE Form 76, "Ballot Reconciliation Statement." Beginning with the casting of ballots during the period described in KRS 117.085(2), each voted ballot shall remain in a locked and sealed receptacle, until the conclusion of the period described in KRS 117.295(1). At the conclusion of each day of voting, an accounting of the number of all voted, unvoted, and spoiled ballots shall be recorded on the SBE Form 76, "Ballot Reconciliation Statement." All ballots and election materials not secured in an area under the direct control of the county clerk after the close of polls shall be secured at the voting location in a secure manner, based upon the advice and recommendations of the county board of elections and the sheriff from the time described in KRS 117.085(2) until the conclusion of voting on the day of an election. As mail-in absentee ballots are received by county clerks, they shall have their unique barcode or label scanned. Upon each mail-in absentee ballot being processed, the unique barcode or label shall be scanned again. If a mail-in absentee ballot is found to be without the need for a signature cure, or a mail-in absentee ballot has been returned along with a completed SBE Form 77, "Missing or Discrepant Mail-in Absentee Signature," the ballot shall be recorded into an optical scanner, to be deposited in a locked and sealed receptacle for the period described in KRS 117.295(1). Any completed SBE Form 76, "Ballot Reconciliation Statement" shall be turned over to the local Commonwealth's Attorney along with any other materials required under KRS 117.365.

Section 4. Any voter who is disabled may request a mail-in absentee ballot via an online accessible ballot portal which shall conform to web accessible design standards as set forth by the W3C Web Accessibility Initiative.

Section 5. Upon receipt of a valid mail-in ballot request, through the online request portal or other valid request method, the request of the voter shall be noted in the Voter Registration System, and reflected in the electronic pollbooks used by precinct election officers. Should a voter noted to have requested a mail-in absentee ballot appear at a polling location in order to vote in-person, the precinct election officer shall communicate with the county clerk, who shall make a determination as to whether the requested mail-in absentee ballot has been completed and returned as a cast ballot by the voter. If the mail-in absentee ballot is found to have been completed and returned as a cast ballot, the voter shall not be permitted to cast an in-person vote. If the mail-in absentee ballot is found not to have been completed and returned as a cast ballot and the ballot has been returned to the county clerk no later than seven (7) days prior to the date of the election as required by KRS 117.085(8), the county clerk shall immediately cancel the issued ballot in the Voter Registration System and allow the voter to cast an in-person ballot after the voter completes Form SBE 32, "Oath of Voter," copies of which shall be forwarded to the Commonwealth's Attorney.

Section 6. A voter, or an individual identified by KRS 117.0861(1), may deliver a mail-in absentee ballot to the office of the county clerk in the county where the voter is registered, or to a secure drop-off location if one is maintained by the county clerk in the county where the voter is registered, rather than mailing the ballot via the United States Postal Service. Any county choosing to use a receptacle for ballot drop-off other than a drop-box provided by the State Board of Elections, must formally seek the State Board of Elections' approval of the receptacle before any ballot shall be allowed to be deposited inside. Any county choosing to utilize a drop-off receptacle, including those provided by the State Board of Elections, shall inform the State Board of Elections of the number of receptacles being used, the type of each receptacle

VOLUME 48, NUMBER 12– JUNE 1, 2022

being used, and the location of each drop-off location. Any receptacle located outside a County Clerk's Office shall be placed in a well-lit, easily accessible location, be bolted down, and be under video surveillance at all times. Any drop-box located inside, shall be under direct supervision of the staff of the county clerk at all times that it is accessible to the public. All drop-boxes used for the receipt of ballots shall be clearly marked as for use by voters in the election, so as to differentiate the drop-box from any other that may be in use in the area. Any other non-elections related drop-box in use by a county clerk for any other official business shall clearly indicate that the other drop-box is not for the return of election material. Each county clerk utilizing one or more ballot drop-off receptacle shall empty each receptacle at least once each business day of the county clerk's office, and secure the absentee ballots therein in a manner consistent with KRS 117.086(3); however, county clerks shall empty receptacles more frequently than daily, as needed, so as to reasonably accommodate the volume of voter-delivered absentee ballots. Upon each emptying of a receptacle, the individuals collecting absentee ballots pursuant to KRS 117.086(2)(e) shall complete Form SBE 78, "Daily Absentee Drop-Box Verification Sheet."

Section 7. After the receipt of a mail-in absentee ballot by the county clerk and the examination of the signatures located on the outer envelope and the detachable flap, as well as, the voter's signature of record, if a signature match cannot be made, the county board of elections, central counting board, or the county clerk shall make a reasonable effort to contact the voter, which shall, at minimum, include the mailing of Form SBE 77, "Discrepant Mail-in Absentee Signature," to provide notice to the voter that they may cure their signature before the closing of the polls on the day of the election. Upon the county board of elections, central counting board, or the county clerk determining the need for a signature cure, the ballot shall be noted in the Voter Registration System and the county clerk shall, on that same day, input the voter's address and any other required data into the SBE 77 and mail the form to the voter.

Section 8. A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.001, shall meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, "Voter Affirmation Form." A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, "Election Officer Affirmation Form." Both the SBE 71 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.

Section 9. Notwithstanding KRS 117.225(3), in a county using an electronic pollbook, if a voter's name is listed on the precinct list furnished by the State Board of Elections as provided in KRS 117.025, the voter provides proof of identification, the voter is exempt pursuant to KRS 117.225(2), or the voter otherwise satisfies the requirements of KRS 117.228, and if no challenge is made, then on the electronic pollbook he or she shall sign his or her name where prompted.

Section 10. Any voter who is qualified to vote on election day in the county of his or her residence may make application to cast an excused in-person absentee ballot during normal business hours during the six (6) business days immediately preceding the Thursday of no-excuse in-person absentee voting by completing SBE Form 44E, "Excused In-Person Absentee Ballot Application."

Section 11. The status of the tamper-resistant seal and the number on the public counter to be recorded from all voting equipment to be used, shall be recorded before and after each day of in-person absentee voting, on SBE Form 79, "Daily Voting Machine Verification Sheet" which, cumulatively shall be collected by the County Clerk.

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

- (a) "Oath of Voter," SBE Form 32, 04/2022;
- (b) "Ballot Reconciliation Statement," Form SBE 76, 04/2022;
- (c) "Discrepant Mail-in Absentee Signature," Form SBE 77, 04/2022;
- (d) "Voter Affirmation Form," Form SBE 71, 04/2022;
- (e) "Election Officer Affirmation Form" Form 72, 04/2022;
- (f) "Excused In-Person Absentee Ballot Application" Form 44E, 04/2022;
- (g) "Daily Voting Machine Verification Sheet" Form 79, 04/2022;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 28, 2022

FILED WITH LRC: April 28, 2022 at 9:58 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 26, 2022, at 10:00 a.m. ET, at the Office of the State Board of Elections. 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 was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary given that Kentucky Acts Chapter 197 requires the State Board to promulgate new administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the mandates of several of the Kentucky Revised Statutes amended by Kentucky Acts Chapter 197.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: 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 will affect voters of the Commonwealth, county clerks, and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, voters may need to complete a form or follow absentee ballot delivery instructions, while county clerks and the State Board of Elections will need to take steps to ensure the security of their elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit all in ensuring that all elections conducted in the Commonwealth are done so in a free, fair, and secure manner.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Forms incorporated by reference.

(b) On a continuing basis: The only continuing cost will be the price associated with printing any copies of the SBE Forms that are necessary.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the State Board of Elections' administrative budget will be used in 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: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Elections and the Commonwealth's county clerks 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 117.001, 117.015, 117.085, 117.086, 117.087, 117.145, 117.225, 117.228, as amended by Kentucky Acts Chapter 197, require and authorize the actions taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is not expected or intended that this administrative regulation will generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? It is not expected or intended that this administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

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

Revenues (+/-): It is not expected or intended that this administrative regulation will generate any revenue.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

(d) How much will it cost the regulated entities for subsequent years? The State Board of Elections estimates that the implementation of this administrative regulation will result in the regulated entities incurring only nominal costs.

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

Cost Savings (+/-): It is not expected that this administrative regulation will result in any cost savings.

Expenditures (+/-): The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended.

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. The State Board of Elections does not expect that this administrative regulation will result in a major economic impact as it is not expected to have an overall negative or adverse economic impact of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(New Administrative Regulation)**

105 KAR 1:450. Quasi-governmental employer reports on independent contractors and leased employees.

RELATES TO: KRS 61.5991, 61.510, 61.543, 61.552, 61.645, 61.675, 61.685

STATUTORY AUTHORITY: KRS 61.5991(1)(c), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705 and 16.505 to 16.652, and to conform to federal statutes and regulations. KRS 61.5991 requires certain employers that participate in the Kentucky Employees Retirement System to report information to the Kentucky Public Pensions Authority on some persons providing services for the participating employer as an independent contractor, a leased employee, or via any other similar employment arrangement.

Section 1. Definitions.

(1) Unless otherwise defined in this section, the definitions contained in KRS 61.510 and the definition of “non-core services independent contractor” in KRS 61.5991 shall apply to this administrative regulation.

(2) “Complete” means all required sections of a form are filled out, the form has been fully executed by an agency head, appointing authority, or authorized designee (such as the reporting official), and all supporting documentation required by the form is included with the form.

(3) “Core services independent contractor” means a person, either personally or through a company or other legal entity, who provides services for a quasi-governmental employer as an independent contractor, other than as a non-core services independent contractor.

(4) “Core services leased employee” means a person who provides services for a quasi-governmental employer as a leased employee through a staffing company, other than as a non-core services independent contractor.

(5) “Direct employment” means employees reported by the quasi-governmental employer in accordance with KRS 61.675 and 105 KAR 1:140.

(6) “File” means a form has been received at the retirement office by mail, fax, secure email, or in-person delivery or via Employer Self Service on the Web site maintained by the agency (if available).

(7) “KPPA” means the administrative staff of the Kentucky Public Pensions Authority.

(8) “Other employment arrangement” means any written agreement between a quasi-governmental employer and a third party (including, but not limited to, a person, company, or other legal entity) for one (1) or more persons to provide services for the quasi-governmental employer in exchange for the third party receiving monetary compensation, remuneration, or profit. “Other employment arrangement” does not include direct employment, any written agreement for one (1) or more persons to provide services for a quasi-governmental employer as a non-core services independent contractor, or any written agreement for one (1) or more persons to provide services to a quasi-governmental employer if the persons would not be in a regular full-time position as defined in KRS 61.510(21) if the persons were directly employed by the quasi-governmental employer.

(9) “Prior fiscal year” means the fiscal year beginning July 1 that is immediately prior to the fiscal year in which the KPPA provides the report to the state budget director’s office and the Legislative Research Commission required by KRS 61.5991(3).

(10) “Quasi-governmental employer” means an employer participating in the Kentucky Employees Retirement System that is a local or district health department governed by KRS Chapter 212, state-supported university or community college, mental health/mental retardation board, domestic violence shelter, rape crisis center, child advocacy center, or any other employer that is eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522. For the purpose of this administrative regulation, “quasi-governmental employer” does not include county attorneys, the Council on State Governments (CSG), the Kentucky Educational Television (KET) Foundation, Association of Commonwealth’s Attorneys, the Kentucky High School Athletic Association (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs (KARP), and the Kentucky

Association of Sexual Assault Programs.

Section 2. Required Form for Annual Reporting.

(1)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement by completing the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, and filing the Form 6756 at the retirement office on or before May 2, 2022.

(b) Effective with the fiscal year beginning July 1, 2022, and for each fiscal year thereafter, quasi-governmental employers shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement by completing the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, and filing the Form 6756 at the retirement office. For each fiscal year beginning on or after July 1, 2022, the Form 6756 shall be filed at the retirement office on or before April 15 of the fiscal year in which the Form 6756 is required.

(c) If a quasi-governmental employer contracts for any additional persons to provide services as core services independent contractors, core services leased employees, or through any other employment arrangement after the submission of a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, in accordance with paragraph (a) or paragraph (b) of this subsection, but prior to the end of the fiscal year, the quasi-governmental employer shall file at the retirement office a completed supplemental Form 6756 reflecting only those persons not previously reported on the initial Form 6756. The supplemental Form 6756 shall be filed at the retirement office on or before June 30 of the fiscal year in which the Form 6756 is required.

(2)(a) Persons exempted under Sections 5 and 6 shall not be required to be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

(b) Persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement who would not qualify as an employee in a regular full-time position pursuant to KRS 61.510(21) if directly employed by the quasi-governmental employer shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

(c) Persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement who would be in a position reported to another state-administered retirement system if directly employed by the quasi-governmental employer shall not be listed on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

(d)1. Quasi-governmental employers may choose to report persons providing services as a non-core services independent contractor on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers.

2. All persons providing services to a quasi-governmental employer as a non-core services independent contractor who are included on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, shall be treated in the same manner as all other persons listed on the Form 6756, including determinations by the KPPA under Section 3 of this administrative regulation.

(3)(a) For the fiscal year beginning July 1, 2021, quasi-governmental employers that do not file at the retirement office a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, on or before May 2, 2022 shall be reported as noncompliant to the state budget director’s office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(b) For each fiscal year beginning on or after July 1, 2022, quasi-governmental employers that do not file at the retirement office a completed Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as required by Section 2(1)(b) of this administrative regulation shall be reported as noncompliant

to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(4) If a quasi-governmental employer files at the retirement office an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, without the documentation required by the Form 6756, the Form 6756 shall not be complete and the quasi-governmental employer shall be noncompliant in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d) unless a completed Form 6756 is later filed at the retirement office by the appropriate deadline set forth in subsections (1), (2), and (5) of this Section.

(5)(a) After receiving an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, the KPPA may notify the quasi-governmental employer that additional information is required.

(b) If additional information is required by the KPPA, the KPPA shall notify the quasi-governmental employer in writing to the attention of the agency head, appointing authority, or authorized designee, such as the reporting official, and shall include the following in its notification:

1. A detailed description of the additional information required, and

2. A deadline by which the additional information required must be filed at the retirement office, which shall not be less than fourteen (14) calendar days, but may be longer than fourteen (14) calendar days.

(c) An initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, shall not be considered complete until all additional information requested by the KPPA is on file at the retirement office.

(d) If a quasi-governmental employer fails to provide the additional information to the KPPA by the deadline listed in the notification described in paragraph (b) of this subsection or by the deadline agreed upon by the KPPA and the quasi-governmental employer, then the quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

(6) During an audit of the quasi-governmental employer conducted in accordance with KRS 61.675, 61.685, and 61.5991(2)(a)2., if the KPPA discovers that a quasi-governmental employer has failed to list all persons on a Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as required by this administrative regulation, then the quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).

Section 3. Determination of Employee or Independent Contractor.

(1) The KPPA shall have the authority to determine which persons listed on initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) and which persons listed on the initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, are independent contractors.

(2) The KPPA shall apply common law factors used by the Internal Revenue Service to determine whether a person listed on the initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer pursuant to KRS 61.510(5) or an independent contractor of the quasi-governmental employer.

(3)(a) If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental employer shall remit all reports, records, contributions, and reimbursements for that person as an employee in a regular full-

time position in accordance with KRS 61.675 and 105 KAR 1:140 effective the calendar month after the KPPA has notified the quasi-governmental employer of its determination in accordance with Section 4 of this administrative regulation.

(b)1. If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental employer shall be required to complete and file at the retirement office a Form 4225, Verification of Past Employment, for that person for all periods during which the person was providing services to the quasi-governmental employer.

2. If the KPPA determines that a person listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, is an employee of the quasi-governmental employer in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21), then the quasi-governmental employer also shall be required to submit all relevant contracts and other documentation demonstrating the relationship between the quasi-governmental employer and the person for all periods during which the person was providing services to the quasi-governmental employer.

(c)1. After reviewing the information from the quasi-governmental employer required by paragraph (b) of this subsection, if the KPPA determines that the person was an employee in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21) for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.675, KRS 61.543, and 105 KAR 1:140, then the person shall be eligible to purchase omitted service in accordance with KRS 61.552(2) for the periods of their previous employment by the quasi-governmental employer in a regular full-time position.

2. After reviewing the information from the quasi-governmental employer required by paragraph (b) of this subsection, if the KPPA determines that the person was an employee in a regular full-time position pursuant to KRS 61.510(5) and 61.510(21) for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.675, KRS 61.543, and 105 KAR 1:140, then the quasi-governmental employer shall be responsible for payment of delinquent omitted employer contributions in accordance with KRS 61.552(2) and 61.675(3)(b) for all periods of the person's previous employment by the quasi-governmental employer in a regular full-time position.

Section 4. Notification to employers of determination of employment relationship.

(1) Effective with the fiscal year beginning July 1, 2021, and for each fiscal year thereafter, quasi-governmental employers shall be notified by the KPPA of the determination of which persons should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) no later than the submission of the report to the state budget director's office and the Legislative Research Commission required by KRS 61.5991(3).

(2)(a) The KPPA shall notify the quasi-governmental employer of the determination of which persons listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, should be reported as employees in regular full-time positions in accordance with KRS 61.510(5) and 61.510(21) in one (1) notification letter.

(b) The notification shall be sent to agency head, appointing authority, or authorized designee, such as the reporting official.

(c) The notification shall include:

1. The name of each person who should be reported as an employee in regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140,

2. A description of the contract or other documents pursuant to which each person who should be reported as an employee in a regular full-time position are providing or have provided services to the quasi-governmental employer, and

3. A statement that all other persons listed on the initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, should not be reported as

employees in regular full-time positions.

Section 5. Contracts for professional services that have not historically been provided by employees.

(1) A quasi-governmental employer shall not be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if:

(a) The person is providing professional services as a core services independent contractor, core services leased employee, or through any other employment arrangement that have not been performed by direct employees of the quasi-governmental employer since January 1, 2000, and

(b) The professional services have been performed or are being performed for the quasi-governmental employer under a contract filed at the retirement office and determined by the KPPA or the Kentucky Retirement Systems to represent services provided by an independent contractor.

(2) Quasi-governmental employers may choose to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the person is providing professional services under a contract that have not historically been provided by employees.

Section 6. Original Contracts Entered Prior to January 1, 2021.

(1) A quasi-governmental employer shall not be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021, unless one of the exceptions in subsections (2), (3), or (4) of this Section applies.

(2) A quasi-governmental employer shall be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021 if the term of the original contract has expired and the contract has been renewed or continued.

(3) A quasi-governmental employer shall be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021 if the contract has been modified to encompass different services.

(4) A quasi-governmental employer shall be required to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with a company entered into prior to January 1, 2021 if the person was not included in the original contract.

(5) Quasi-governmental employers may choose to report a person on the Form 6756, Annual Employer Certification of Non-Contributing Service Providers, even if the person is providing services to the quasi-governmental employer as a core services independent contractor, core services leased employee, or through any other employment arrangement under an original contract with the person or a company entered into prior to January 1, 2021.

Section 7. Report to the state budget director's office and the Legislative Research Commission.

(1)(a) To determine the number of employees of the quasi-governmental employer reported for the prior fiscal year in accordance with KRS 61.5991(3)(a), the KPPA shall add together all employees in regular full-time positions reported by the quasi-governmental employer pursuant to KRS 61.675 and 105 KAR

1:140 in the prior fiscal year.

(b) Persons listed on an initial or supplemental Form 6756, Annual Employer Certification of Non-Contributing Service Providers, for the prior fiscal year who are ultimately determined by the KPPA to be employees of the quasi-governmental employer in regular full-time positions shall not be included in the number of employees of the quasi-governmental employer for the prior fiscal year. Such persons may be included in the number of employees of the quasi-governmental employer for a subsequent fiscal year if the person is reported by the quasi-governmental employer in the subsequent fiscal year as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140.

(2) To determine the number of persons providing services to the quasi-governmental employer who were not reported for the prior fiscal year in accordance with KRS 61.5991(3)(b), the KPPA shall use the total number of persons listed on initial and supplemental Form 6756s, Annual Employer Certification of Non-Contributing Service Providers, for the prior fiscal year.

(3) The KPPA shall report the following information for each quasi-governmental employer determined to have falsified data or been noncompliant in accordance with KRS 61.5991(3)(d):

(a) The name of the quasi-governmental employer,

(b) A description of the type of data falsified and the support the KPPA has for believing the data to be falsified, if applicable, and

(c) A description of the nature of the noncompliance, if applicable.

Section 8. Incorporation by Reference.

(1) Form 6756, "Annual Employer Certification of Non-Contributing Service Providers," dated September 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at kyret.ky.gov.

JOHN CHILTON, Chief Executive Officer

APPROVED BY AGENCY: April 21, 2022

FILED WITH LRC: May 5, 2022 at 3:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on Tuesday, July 26, 2022 at 2:00 p.m. at the Kentucky Public Pensions Authority, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 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 Board, Executive Director Office of Legal Services, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8801, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Board

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the forms, procedures, and requirements for certain quasi-governmental employers in the

Kentucky Employees Retirement System that must provide information to the Kentucky Public Pensions Authority (KPPA) on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar arrangements in accordance with KRS 61.5991 and 61.645(9)(e). In particular, KRS 61.5591(1)(c) authorizes the promulgation of an administrative regulation to implement KRS 61.5991.

(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 forms, procedures, and requirements for certain quasi-governmental employers in the Kentucky Employees Retirement System that must provide information to the KPPA on some independent contractors, leased employees, and other persons providing services for the quasi-governmental employer under similar 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: 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: One (1) entity that provides day-to-day operations for the Kentucky Employees Retirement System: the KPPA. One (1) public pension system: the Kentucky Employees Retirement System. Approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). The number of individuals affected by this administrative regulation is unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The affected quasi-governmental employers will be required to provide the KPPA with information

concerning some persons that are providing services for the quasi-governmental employer as independent contractors, leased employees, or through another similar arrangement. If such persons are determined to be employees in regular full-time positions under KRS 61.510(5) and 61.510(21), the affected quasi-governmental employers will be required to prospectively treat the persons as "employees" in accordance with KRS Chapter 61, including reporting employee and employer contributions as required by KRS 61.675 and 105 KAR 1:140. Additionally, in the event of such a determination, the affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675. Finally, the information provided by the KPPA to the state budget director's office and the Legislative Research Commission on the affected quasi-governmental employers may affect subsidies for retirement costs that a quasi-governmental employer may receive pursuant to KRS 61.5991(5) and 61.5991(6).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation for regulated entities is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities are eligible to receive subsidies for retirement costs pursuant to KRS 61.5991(5) and 61.5991(6).

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

(a) Initially: The costs associated with the implementation of this administrative regulation should be minimal.

(b) On a continuing basis: The costs associated with the implementation of this administrative regulation should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the KPPA, which will carry out the implementation and enforcement of this regulation pursuant to KRS 61.505 and 61.5991, are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All affected quasi-governmental employers are subject to the same processes and procedures.

FISCAL NOTE

(1) What 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 approximately 100 quasi-governmental employers, including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, mental health/mental retardation boards, domestic violence shelters, rape crisis centers, child advocacy centers, and other employers that are eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522 (excluding county attorneys, the Council on State Governments, the Kentucky Educational Television Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association, the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs, and the Kentucky Association of Sexual Assault Programs). Additionally, this administrative regulation impacts the KPPA and the Kentucky Employees Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.5991 and 61.645.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 effect of this administrative regulation on the expenditures and revenues of state government agencies in the first full year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this 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 effect of this administrative regulation on revenues of state government agencies in the first year the administrative regulation is to be in effect is unknown. Local government agencies are not affected by 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? The effect of this administrative regulation on revenues of state government agencies in subsequent years the administrative regulation is to be in effect is unknown. Local government agencies are not affected by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to the KPPA to administer this administrative regulation in the first year should be minimal.

(d) How much will it cost to administer this program for subsequent years? The cost to the KPPA to administer this administrative regulation in subsequent years should be negligible.

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As a result of this administrative regulation, all persons determined to be employees in regular full-time positions as defined by KRS 61.510(5) and 61.510(21) shall be treated prospectively from the determination as "employees" in accordance with KRS Chapter 61, including the required payment of employee and employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Additionally, in the event of such a determination, affected employers may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. The effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect is largely unknown. See subsequent responses for more details.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Regulated entities that comply with this regulation and KRS 61.5991 are eligible to receive subsidies toward retirement costs pursuant to KRS 61.5991(6). The exact dollar amounts of the subsidies are unknown.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Regulated entities that comply with this regulation and KRS 61.5991 are eligible to receive subsidies toward retirement costs pursuant to KRS 61.5991(6). The exact dollar amounts of the subsidies are unknown.

(c) How much will it cost the regulated entities for the first year? The cost to regulated entities in the first year this administrative regulation is to be in effect is unknown.

(d) How much will it cost the regulated entities for subsequent years? The cost to regulated entities in the subsequent years this administrative regulation is to be in effect is unknown.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: As previously stated, the exact dollar amounts of cost savings through subsidies that eligible regulated entities may receive are not known because the subsidies are at the discretion of the General Assembly and percentage-based. See KRS 61.5991(6). Additionally, the exact dollar amounts of expenditures by regulated entities as a result of this administrative regulation are unknown at this time. All persons determined to be employees in regular full-time positions as defined by KRS 61.510(5) and 61.510(21) shall be treated prospectively from the determination as "employees" in accordance with KRS Chapter 61, including the required payment of employer contributions to the KPPA on behalf of the Kentucky Employees Retirement System in accordance with KRS 61.675. Furthermore, in the event of such a determination, regulated entities may be required to remit past delinquent employer contributions as required by KRS 61.552 and 61.675.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have an overall negative or adverse economic impact on regulated entities (quasi-governmental employers), as the regulated entities that comply with this administrative regulation and KRS 61.5991 are eligible to receive subsidies for retirement costs.

**TOURISM, ARTS AND HERITAGE CABINET
Heritage Council
(New Administrative Regulation)**

300 KAR 6:011. Historic rehabilitation tax credit certifications.

RELATES TO: KRS 171.396, 171.3961, 171.3963, 171.397, 54 U.S.C. 300101, 36 C.F.R. 800, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 171.397(12), (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.397(12) and (14) authorizes the Kentucky Heritage Council to promulgate administrative regulations to implement the certified historic structures rehabilitation tax credit and to impose fees for tax credit applications. This administrative regulation establishes the application process to determine a taxpayer's eligibility to claim a certified historic structure rehabilitation tax credit.

Section 1. Definitions. (1) "Act" means the enabling legislation for the historic rehabilitation tax credit, KRS 171.396 to 171.397.

(2) "Adjusted basis of the structure" means the purchase price of the property, minus the cost of land, plus improvements already made, minus allowable depreciation.

(3) "Certified historic structure" is defined by KRS 171.396(1).

(4) "Certified rehabilitation" is defined by KRS 171.396(2).

(5) "Certified rehabilitation credit cap" is defined by KRS 171.396(3).

(6) "Complete and adequately documented" means the applicant has provided all elements outlined in the Part 1, 2, 3 or TC-4 application, fee payment, adequate photo documentation at the time of purchase and documenting any subsequent changes by current owner, photo key, maps, and related architectural renderings or construction documents.

(7) "Completed rehabilitation project" means any certified historic structure which has been substantially rehabilitated and, after the completion date, has been submitted by the applicant to the council for final certification of rehabilitation under the Act.

(8) "Completion date" means:

(a) For owner-occupied residential property, the month, date,

and year in which the last eligible rehabilitation expense is incurred; or

(b) For all other property, the month, date, and year when the rehabilitation project is completed to allow occupancy of the entire building or some identifiable portion of the building and, if applicable, a certificate of occupancy has been issued.

(9) "Department" means the Kentucky Department of Revenue.

(10) "Director" means the executive director of the Kentucky Heritage Council.

(11) "Disqualifying work" is defined by KRS 171.396(5).

(12) "Exempt entity" is defined by KRS 171.396(6).

(13) "File" or "filed" means physical receipt by the council of an application for certification along with the tender of the appropriate review fee.

(14) "Final amount of credit approved" means the individual credit awarded for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.3961 or KRS 171.397, whichever is applicable, when the Certificate of Rehabilitation-Part 3 is filed and approved by the council.

(15) "Inspection" means a visit by the director or an authorized representative of the council to a property for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

(16) "Meaningful consultation" is the opportunity to consult with a historic building owner prior to the removal of historic fabric or work that does not meet the Secretary of the Interior's Standards for Rehabilitation.

(17) "National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the U. S. Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, 54 U.S.C. 300101, and implemented through 36 C.F.R. Part 800.

(18) "Owner" means:

(a) The person, partnership, corporation, public agency, or other entity holding a fee simple interest in a property, or any other person or entity recognized by the department for purposes of the applicable tax benefit under KRS 171.397 or KRS 171.3961, whichever is applicable; or

(b) A lessee, if the remaining term of the lease is not less than twenty-seven and one-half (27 1/2) years for residential property or thirty-nine (39) years for all other property.

(19) "Owner-occupied residential property" is defined by KRS 171.396(8).

(20) "Preliminary tax credit allocation" means the maximum individual credit available for certified rehabilitation to an owner of a certified historic structure as determined pursuant to KRS 171.397, on April 29 of the year in which the Certificate of Rehabilitation-Parts 1 and 2 are filed and approved by the council.

(21) "Property" means a building and its site and landscape features.

(22) "Qualified rehabilitation expense" is defined by KRS 171.396(9).

(23) "Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historic, architectural, and cultural values as determined by the director.

(24) "Rehabilitation plan" means a plan pursuant to which a certified historic structure will be substantially rehabilitated.

(25) "Rehabilitation project" means any certified historic structure, submitted by the applicant to the council, for certifications of rehabilitation under the Act.

(26) "Standards for rehabilitation" mean the Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. 67.7, as established by the U. S. Department of Interior and restated in Section 4(2) of this administrative regulation.

(27) "Starting date" means the date upon which the applicant applies for the rehabilitation permit for work proposed by the rehabilitation plan or the date upon which actual physical work contemplated by the plan of rehabilitation begins.

(28) "Substantial rehabilitation" is defined by KRS 171.396(10).

(29) "Taxpayer" is defined by KRS 171.396(11).

Section 2. Certifications of Rehabilitation. (1) For tax credits under KRS 171.3961, a request for certification of historic significance and of rehabilitation under the Act shall be a five (5) stage process that requires the filing of the following forms:

(a) Certification Application-Intent to Apply for Expanded Credit;

(b) Certification Application Part 1-Evaluation of National Register Status;

(c) Certification Application Part 2-Description of Rehabilitation;

(d) Certification Application Part 3-Request for Certification of Completed Work; and

(e) Certification Application-Summary of Investment and Election of Credit.

(2) For tax credits under KRS 171.397, a request for certification of historic significance and of rehabilitation under the Act shall be a four (4) stage process that requires the filing of the following forms:

(a) Certification Application Part 1-Evaluation of National Register Status;

(b) Certification Application Part 2-Description of Rehabilitation;

(c) Certification Application Part 3-Request for Certification of Completed Work; and

(d) Certification Application-Summary of Investment and Election of Credit.

(3) Intent to Apply for Expanded Credit shall be a request for certification of an applicant's intent to claim a tax credit established by KRS 171.3961 for a proposed rehabilitation project.

(4) Part 1 shall be a request for certification of historic significance.

(5) Part 2 shall be a request for certification of a proposed rehabilitation project.

(6) Part 3 shall be a request for certification of a completed rehabilitation project.

(7) Summary of Investment and Election of Credit shall be actual cost, square footage, and use attributed to the rehabilitation work and an irrevocable election by the taxpayer to receive a refundable credit or transfer the credit.

(8) Certification of applications shall be filed with the council as follows:

(a)1. Part 1 and Part 2 shall be filed with the council on or before April 29 for a preliminary determination of maximum credit eligibility for a credit under KRS 171.397.

2. Part 1, Part 2, and Intent to Apply for Expanded Credit shall be filed with the council on or before June 30, 2015, for a credit under KRS 171.3961.

(b) Part 1 and Part 2 may be filed after rehabilitation has commenced, but an applicant who begins rehabilitation prior to receiving Part 2 certification assumes the risk that certification may be denied. If rehabilitation has commenced prior to receiving Part 2 certification, the applicant is required to check a corresponding box on the Part 2 form that may prompt an inspection by council staff to determine level of completeness. If it is determined that demolition and/or rehabilitation has progressed beyond the point where "meaningful consultation" can be carried out, the council shall notify the applicant within thirty (30) days of inspection that a foreclosure on the agency's opportunity to comment on the rehabilitation plan has occurred and the application is closed. Any application or review fees that have been paid may be refunded. A taxpayer may appeal a determination of foreclosure by filing an appeal in writing within thirty (30) days of notification to the council board. The council board shall either confirm the determination or reverse the determination with instructions to return the application to council staff for standard processing and review. The council shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is considered at the regularly scheduled council meeting where a quorum is present.

(c) Part 3 and Summary of Investment and Election of Credit shall be filed with the council after the completion date of a completed rehabilitation project for a final determination of credit.

(9) If at any stage an application is not approved by the council, the rehabilitation project shall not qualify as a certified rehabilitation for purposes of the Act.

Section 3. Certifications of Historic Significance-Part 1. (1) Application. The Certification Application Part 1-Evaluation of National Register Status form shall be timely filed with the council for certification of historic significance.

(a) Property individually listed in the National Register of Historic Places. Individually listed property shall be considered a certified historic structure for purposes of the Act subject to confirmation by the council. The following information shall be provided by the applicant:

1. Names and mailing addresses of owners;
2. Name and address of property;
3. Photographic documentation of the building and property prior to and after alteration, showing exterior and interior features and spaces to ensure that the listed property has not lost the characteristics which caused it to be listed on the National Register of Historic Places;
4. Descriptions of all the buildings within the listing if the property contains more than one (1) building for the purpose of determining which of the buildings are of historic significance to the property;
5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;
6. Brief statement of significance summarizing how the property reflects the values that give its distinctive historical and visual character, and explaining any significance attached to the property itself;
7. A copy of a map indicating where the subject property is located. If an individually-listed property is also located in a historic district listed in the National Register of Historic Places, a copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district shall also be included; and
8. Signatures of owners requesting confirmation of listing in the National Register of Historic Places or concurring in the request if the owners are not the applicants.

(b) Property located in a historic district listed in the National Register of Historic Places. An applicant shall request that the property be certified by the council as a historic structure contributing to the significance of a historic district. The following information shall be provided:

1. Names and mailing addresses of owners;
2. Name and address of property;
3. Name of historic district;
4. Photographic documentation of the building and property prior to and after alteration, showing exterior and interior features and spaces, and photographic documentation of adjacent properties and structures on the street showing significance to the historic district;
5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;
6. Brief statement of significance summarizing how the property reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself;
7. A copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district; and
8. Signatures of owners requesting certification or concurring in the request if the owners are not the applicants.

(2) Multiple structures. A property containing more than one (1) building shall be treated as a single certified historic structure if the council determines that the buildings have been functionally-related historically to serve an overall purpose, whether the property is individually listed in the National Register or is located within a registered historic district. Buildings that are functionally related historically shall be those which have functioned together to serve an overall purpose during the property's period of significance.

(3) Standards for evaluating significance.

(a) In addition to the existing National Register documentation, an application for certification of historic significance shall contain documentation with information about the significance of the specific buildings and structures.

(b) A property located within a historic district listed in the National Register of Historic Places shall be evaluated for contribution to the historic significance of the district by applying the following standards:

1. A property contributing to the historic significance of a district shall be a property which by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development;

2. A property not contributing to the historic significance of a district shall be a property which does not add to the district's sense of time and place and historical development; or where the location design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the property has been irretrievably lost; and

3. If the building was built within the past fifty (50) years, it shall not be considered to contribute to the significance of a district, unless a strong justification concerning its historical or architectural merit is given or the historical attributes of the district are considered to be less than fifty (50) years old.

(c) An evaluation of historic significance shall be made based upon the appearance and condition of the property before rehabilitation was begun.

(d) The qualities of a property and its environment which qualify it as a certified historic structure shall be determined taking into account all available information, including information derived from the physical and architectural attributes of the building, and shall not be limited to information contained in the National Register nomination reports.

(e) If a nonhistoric surface material obscures a façade, it may be necessary to remove the surface materials prior to requesting certification so that a determination of significance can be made. After the material has been removed, if the obscured façade has retained substantial historic integrity and the property otherwise contributes to the historic district, it shall be determined to be a certified historic structure.

(4) Review of Part 1 Applications.

(a) A complete and adequately-documented Certification Application Part 1-Evaluation of National Register Status form shall be reviewed by the council to determine if the property contributes to the historic significance of the district by applying the standards established in subsection (3) of this section.

(b) After consideration of the information contained in the application and other available information, the council shall approve the application if:

1. The property meets the standards for evaluating for significance established in subsection (3) of this section; or

2. The director confirms that the property is individually listed in the National Register of Historic Places.

(5) If the application is not adequate to complete the review, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application. The applicant's failure to respond may result in denial of the application. The council's notification or failure to notify shall not constitute a waiver of a deficiency or an alteration of a time limitation established under the Act.

(6) An applicant shall notify the council of any substantial damage, alteration, or changes to a property that occurs after issuance of a Certification of Part 1-Evaluation of National Register Status. The council may, upon thirty (30) days written notice to the applicant, withdraw a certification of historic significance and may seek to have the property removed from the National Register under 36 C.F.R. 800.

Section 4. Certifications of Rehabilitation-Part 2. (1) Applications.

(a) A Certificate of Application Part 2-Description of Rehabilitation form shall be timely filed with the council for certification that a rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in

subsection (2) of this section.

(b) A rehabilitation project shall be done according to a rehabilitation plan.

(c) The burden shall be upon the applicant to supply sufficient information to the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation.

(d) An application shall include the following information:

1. Names and mailing addresses of owners;
2. Name and address of property;
3. Designation of whether the application is for owner-occupied residential property or other property;
4. Information sufficient to establish the proposed use of the structure;
5. The adjusted basis for the property if other than owner-occupied residential or owned by an exempt entity;
6. Proposed starting date and completion date;
7. Projected qualified rehabilitation expenses;
8. Numbered photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment before rehabilitation that correspond to numbered positions on existing plans;
9. The taxpayer identification number or Social Security number;
10. Written detailed description of existing features and their conditions, and a written description of proposed rehabilitation work and the impact on existing features;
11. Plans for any attached, adjacent, or related new construction, if applicable; and
12. Signatures of owners requesting certification or concurring in the request if the owners are not the applicant.

(2) Standards for rehabilitation.

(a) The standards for rehabilitation shall be the criteria used to determine if the rehabilitation qualifies as a certified historic rehabilitation. Rehabilitation shall be consistent with the historic character of the structure or structures and, if applicable, the district in which it is located.

(b) A rehabilitation project shall meet all of the standards for rehabilitation established in this paragraph.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. A change that creates a false sense of historical development, such as adding a conjectural feature or architectural element from another building, shall not be undertaken.

4. Changes to the property that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

6. Deteriorated architectural features shall be repaired rather than replaced. If the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, if possible, materials. Replacement of missing architectural features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If these resources shall be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its

environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(c) The quality of materials, craftsmanship, and related new construction in rehabilitation shall match the quality of materials, craftsmanship, and design of the historic structure in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings, and use of these treatments or materials shall result in denial of certification. The burden shall be upon the applicant to consult with the council for a determination as to what rehabilitation measures are appropriate for the structure. Inappropriate rehabilitation measures on historic properties shall include:

1. Improper masonry repointing materials and techniques;
2. Improper exterior masonry cleaning methods;
3. Improper introduction of insulation if damage to historic fabric would result; and
4. Incompatible additions and new construction.

(d) The council may consider the dismantling and rebuilding of a portion of a certified historic structure to stabilize and repair weakened structural members and systems as a certified historic rehabilitation if:

1. The necessity for dismantling is justified in supporting documentation;
2. Significant architectural features and overall design are retained; and
3. Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

(3) Substantial rehabilitation. A rehabilitation project shall be a substantial rehabilitation only if the requirements of KRS 171.396(9) and (10) are met. To determine whether a rehabilitation project is a substantial rehabilitation, the conditions established in this subsection shall apply.

(a) Increases to the adjusted basis of the structure shall include capital improvements to the structure, legal fees incurred for perfecting title, and zoning costs. Any depreciation previously claimed for the structure shall be subtracted from this figure.

(b) If a cost only partially qualifies as an eligible rehabilitation expense because some of the cost is attributable to the enlargement of the building, the expenditures shall be apportioned proportionately between the original portion of the building and the enlargement.

(c) In addition to the expenses listed in KRS 171.396(9), qualified rehabilitation expenses shall include:

1. The cost of work done to structural components of the building within the footprint of the historic structure if they are permanent;

2. Costs related to new heating, plumbing, and electrical systems, as well as expenses related to updating kitchens and bathrooms, compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101), and fire suppression systems and fire escapes; and

3. The cost of architectural and engineering fees, site survey fees, legal expenses, development fees, and other construction-related costs, if those costs are added to the basis of the property.

(d) In addition to the exclusions listed in KRS 171.396(9), qualified rehabilitation expenses shall not include the construction costs for a new building, parking lot, or sidewalk.

(4) Review of Part 2 Applications.

(a) A complete and adequately documented Certification Application Part 2- Description of Rehabilitation shall be reviewed by the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation. Applicants that do not meet this standard will be notified via email and given 10 days to submit missing elements; otherwise, the project will be placed on hold and removed from the allocation pool until KHC certifies that the Part 2 constitutes a complete and adequately documented application.

(b) After consideration of the information contained in the application and other available information, the council shall issue

a preliminary certification of rehabilitation if the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(5)(a) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established in subsection (2) of this section, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application.

(b) An applicant's failure to respond may result in denial of the application.

(c) The council's notification or failure to notify shall not constitute a waiver of a deficiency or an alteration of a time limitation established under the Act.

(6) Changes to rehabilitation plans. Once a rehabilitation plan has been approved by the council, an applicant may only make substantive changes in the work described in the application by:

(a) Filing a Certification Application-Continuation/Amendment form with the council; and

(b) Receiving notification from the council that the revised plan continues to meet the standards of rehabilitation established in subsection (2) of this section and is a substantial rehabilitation.

Section 5. Certifications of Rehabilitation-Part 3 Completed Work. (1) Application. Upon completion of a rehabilitation project, an applicant shall file a Certification Application Part 3-Request for Certification of Completed Work form with the council for final certification of rehabilitation. An application shall include the following information:

(a) Names and mailing addresses of owners;

(b) Name and address of property;

(c) Designation of whether the application is for owner-occupied residential property or other property;

(d) Actual starting date and completion date;

(e) Actual qualified rehabilitation expenses;

(f) Photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment during and after rehabilitation;

(g) The taxpayer identification number or Social Security number; and

(h) Signatures of owners or a representative authorized to sign on behalf of the owner requesting certification.

(2) Summary of Investment and Election of Credit. In addition to filing a Certification Application Part 3-Request for Certification of Completed Work form, the applicant shall file a Summary of Investment and Election of Credit form with the council. The Summary of Investment and Election of Credit shall include the following:

(a) Names and mailing addresses of the owners;

(b) Name and address of the property;

(c) Actual costs attributed to the rehabilitation work;

(d) Signatures of the owners or a representative authorized to sign on behalf of the owner;

(e) Notarization of the signatures if the property is an owner-occupied residence or, for all other property, compilation by a certified public accountant or equivalent of the actual costs attributed to the rehabilitation of the historic structure; and

(f) An irrevocable election by the taxpayer to:

1. Use the credit, in which case, the credit shall be refundable;

or

2. Transfer the credit, pursuant to KRS 171.397(8).

(3) Scope of review.

(a)1. Rehabilitation shall encompass all work on the interior and exterior of the certified historic structure or structures and the site and environment, as determined by the council, as well as related demolition, new construction, or rehabilitation work which may affect the historic qualities, integrity or site, landscape features, and environment of the certified historic structure.

2. Conformance to the standards of rehabilitation established in Section 4(2) of this administrative regulation shall be determined on the basis of application documentation and other available information by evaluating the property as it existed prior to the commencement of rehabilitation.

(b) A phased rehabilitation project shall not be permitted. Starting April 30, 2022, a Part 2 application may not be submitted if a building has already received a Part 2 allocation from a previous year that has not yet been certified or if the owner has not relinquished that allocation in writing.

(c) Portions of a completed rehabilitation project that are not in conformance with the standards for rehabilitation shall not be exempted and may result in denial of the Certification Application Part 3-Request for Certification of Completed Work.

(4) Review of Part 3 Applications. A complete and adequately documented Certification Application Part 3 - Request for Certification of Completed Work shall be reviewed by the council for a determination that the completed rehabilitation project is a certified rehabilitation and a determination of the final amount of credit approved. The council shall issue a final certification of rehabilitation if all the following requirements have been met:

(a) All elements of the completed rehabilitation project meet the standards for rehabilitation as established in Section 4(2) of this administrative regulation;

(b) The completed rehabilitation project was a substantial rehabilitation; and

(c) Part 3 was filed with the council after the completion date.

(5) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established in Section 4(2) of this administrative regulation, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application. Applicant's failure to respond may result in denial of the application. The council's notification or failure to notify shall not constitute a waiver or alteration of time limitations established under the Act.

Section 6. Recapture of Preliminary Tax Credit Allocation For Credits Under KRS 171.397. (1) Notice of Recapture. For tax credits under KRS 171.397, if an owner fails to obtain a Certification of Completed Work within thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax credit, the director shall mail to the owner written notice of recapture of the preliminary tax credit allocation.

(2) Objection.

(a) If the owner objects to the recapture of the preliminary allocation of tax credit, the owner shall file written notice of objection accompanied by a supporting statement setting forth grounds for objection within forty-five (45) days of the date of the notice of recapture.

(b) If the owner does not timely object, the preliminary tax credit allocation shall be recaptured by the council and added to the certification rehabilitation credit cap for the next calendar year, pursuant to KRS 171.397(2)(c).

(3) Reinstatement. Within thirty (30) days of receipt of the owner's notice of objection, the council shall review the objection and determine if the owner has provided reasonable grounds as established in subsection (5) of this section to reinstate the preliminary allocation.

(a) If the council determines that the preliminary tax credit allocation shall be reinstated, the:

1. Council shall give the owner written notice that the preliminary tax credit allocation has been reinstated for an additional twenty-four (24) months;

2. Owner shall pay a review fee for a Part 2 application in the amount established in Section 10(2) of this administrative regulation, whichever is applicable; and

3. Owner shall obtain a Certification of Completed Work on or before the expiration of twenty-four (24) months. If the owner fails to obtain a Certification of Completed Work or fails to request an extension under subsection (4) of this section, the council shall initiate recapture of the preliminary tax credit allocation under the procedures established in this section.

(b) If the council determines that the preliminary tax credit allocation shall not be reinstated:

1. The council shall give the owner written notice that the preliminary tax credit allocation has not been reinstated;

2. The owner shall be given thirty (30) days from the date of

the notice that the preliminary tax credit allocation has not been reinstated to file an appeal, pursuant to Section 8 of this administrative regulation; and

3. If the owner fails to file a timely appeal, pursuant to Section 8 of this administrative regulation:

- a. The preliminary allocation shall not be reinstated;
- b. The preliminary tax credit allocation shall be recaptured by the council; and
- c. The preliminary tax credit allocation shall be added to the certification rehabilitation credit cap for the next calendar year, pursuant to KRS 171.397(2)(c).

(4) Extension of Preliminary Tax Credit Allocation. (a) At any time prior to expiration of thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax, an owner may request in writing that the preliminary tax credit allocation be extended for a period of twenty-four (24) months if the:

- 1. Owner provides written documentation of reasonable grounds established in subsection (5) of this section for an extension; and
 - 2. Owner pays a review fee for a Part 2 application in the amount established in Section 10(2) of this administrative regulation, whichever is applicable.
- (b) Prior to the expiration of the twenty-four (24) month extension, the owner may request another extension under the procedures established in this subsection. There shall not be a limit on the number of extensions that an owner may request.

(5) Grounds for Reinstatement or Extension.

(a) Reasonable grounds shall be documentation of on-going efforts to obtain financial, legal, material, or physical resources necessary to complete the rehabilitation project or documentation that the delay in completion of the rehabilitation project is necessary and unavoidable.

(b) Reasonable grounds shall not include casualty loss or demolition to the extent that the structure no longer qualifies as a certified historic structure, inability to qualify as a substantial rehabilitation, or inability or unwillingness to perform work conditioned by the council and necessary to qualify the project as a certified rehabilitation.

(c) The number of prior reinstatements or extensions shall not be a factor in determining if a reinstatement or extension shall be granted.

Section 7. Inspection. The director or an authorized representative of the council shall be permitted to conduct an inspection of the property at any time up to three (3) years after the council has issued a Certification of Completed Work to determine if the work meets the standards for rehabilitation established in Section 4(2) of this administrative regulation.

Section 8. Appeal. A taxpayer may appeal a determination that the rehabilitation project does not qualify as a certified rehabilitation for purposes of the Act by filing an appeal in writing, in care of the council, to the director or a reviewing officer designated by the director to hear an appeal. (1) An appeal shall be made within thirty (30) days of the date of receipt of the determination being appealed.

(2) The director or the reviewing officer shall decide, based solely upon the record developed by the council, if the council:

- (a) Reached incorrect conclusions of law;
 - (b) Made clearly erroneous factual findings;
 - (c) Did not consider relevant facts; or
 - (d) Abused the discretion available to that person.
- (3) The director's or reviewing officer's decision shall:
- (a) Confirm the determination;
 - (b) Reverse the determination on account of incorrect conclusions of law; or
 - (c) Remand the matter to the council for further proceedings.

(4) The director or reviewing officer shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

(5) If the appeal is decided by a reviewing officer and the reviewing officer affirms the determination, the taxpayer may appeal the reviewing officer's determination in writing to the

director, pursuant to this subsection.

(a) An appeal to the director shall be filed within the time period established in subsection (1) of this section.

(b) The director shall use the same standards of review established in subsection (2) of this section.

- (c) The director shall:
- 1. Confirm the decision of the reviewing officer;
 - 2. Reverse the determination on account of incorrect conclusions of law; or
 - 3. Remand the matter to the council for further proceedings.

(d) The director shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

Section 9. Revocation of Owners' Certifications. (1) If, after obtaining final certification of rehabilitation, the council determines that the rehabilitation was not undertaken as represented by the owner in the applications, amendments, or supporting documentation, or the owner upon obtaining final certification undertook disqualifying work, the council may revoke a certification by giving written notice to the owner.

(2) The owner may file an appeal, pursuant to Section 8 of this administrative regulation.

(3) If the owner fails to file a timely appeal, the final certification of rehabilitation shall be revoked.

Section 10. Fees for Processing Rehabilitation Certification Requests. (1) Payment of fees for review of Parts 2 and 3 shall be filed with the council when applications are filed and are nonrefundable. Certification shall not be issued until the appropriate remittance is received. Payment shall be made by check or money order payable to the Kentucky State Treasurer.

(2) For tax credits under KRS 171.397, fees for reviewing rehabilitation certification requests of owner-occupied residential property, commercial and other buildings shall be charged in accordance with the following schedule. If a Part 2 application is denied, there shall not be a charge for a Part 3 review.

Rehabilitation Costs for Owner-Occupied Residences, Commercial and Other Buildings	Part 2 Review Fee	Part 3 Review Fee
\$20,000 - \$50,000	\$150.00	\$150.00
\$50,001 - 100,000	\$250.00	\$250.00
\$100,001 - \$250,000	\$375.00	\$375.00
250,001 - \$500,000	\$500.00	\$500.00
\$500,001 - \$6,000,000	.15% of estimate eligible costs and expenses	.15% of estimate eligible costs and expenses
Over \$6,000,000	\$9,000.00	\$9,000.00

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

- (a) "Certification Application Part 1-Evaluation of National Register Status", KHC Form TC-1, Rev. 2022;
- (b) "Certification Application Part 2-Description of Rehabilitation", KHC Form TC-2, Rev. 2022;
- (c) "Certification Application Part 3-Request for Certification of Completed Work", KHC Form TC-3, Rev. 2022;
- (d) "Certification Application-Continuation/Amendment", KHC Form TC-2a, Rev. 2022; and
- (e) "Summary of Investment and Election of Credit", KHC Form TC-4, Rev. 2022;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Heritage Council, 410 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material is also available on the Council's Web site at <https://heritage.ky.gov/historic-buildings/rehab-tax-credits/Pages/guides.aspx>.

CRAIG POTTS, Executive Director
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: April 29, 2022

FILED WITH LRC: April 29, 2022 at 4:00 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2022, at Kentucky Heritage Council at 410 High Street, Frankfort, Kentucky 40601. 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 July 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: Craig Potts, Executive Director, 410 High Street, Frankfort, Kentucky 40601, phone (502) 564-7005, fax (502) 564-5820, email craig.potts@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Craig Potts

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the framework to implement the Kentucky Historic Rehabilitation Tax Credit program. It was anticipated that a new regulation reflecting significant changes made to the corresponding KRS during the 2021 legislative session would be adopted in advance of the current KAR's expiration in February 2022. That deadline could not be met. Included within this regulation is a fee structure that has not been increased since the program's implementation in 2005. Addressing this problem along with updates to the program's implementation and management is the focus of this proposed administrative regulation change.

(b) The necessity of this administrative regulation: This emergency regulation reinstates and updates a long-standing but outdated (and recently expired) version. If not corrected, the newly expanded/enhanced Kentucky Historic Preservation Tax Credit Program's implementation will remain at risk. Kentucky currently has one of the lowest fee structures for state historic tax credit review in the United States. This is largely because we have not revised our rates in many years despite a wide variety of changes in the marketplace and the actual financial cost to the agency. The Kentucky Historic Preservation Tax Credit program has become very popular since the program was adopted in 2005, and the amount of work required for staff reviews (particularly for multi-million dollar rehabilitation projects) has increased dramatically. Furthermore, the Kentucky Legislature increased the program cap from \$5M per year to \$100M per year in the 2021 legislative session which is anticipated to significantly increase the size and complexity of the workload in future years. We therefore propose to raise our review fees to be more in-line with industry standards and peer states and to account for the financial burden it places on the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The basic structure of the administrative regulation remains largely unchanged in this proposal. It is slightly simplified in that it provides one tiered fee for all property and applicant types instead of two. KRS 171.397 provides that the Kentucky Heritage Council can impose fees for processing applications for tax credits, not to exceed the actual cost associated with processing the applications. The proposal is based on 1) staff time/cost 2) direct expense related to travel, mailings, technology infrastructure, software, etc. 3) fees charged for Federal Tax Credit review (federal counterpart program), and 4) fees charged by other states. Estimated cost to the Kentucky Heritage Council for implementing the current tax credit program (capped at \$5M per year) is \$120 - \$150k per year while the estimated current income from fees is \$68k per year. This does not

consider future costs to the agency when the \$100M program cap goes into effect on July 1, 2022 or any additional enhancements to the program that are likely to result from the current legislative session.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Current funding levels are not sufficient to maintain adequate levels of staffing/service to carry out the program efficiently or effectively. Increasing our fee revenue will support the delivery of service including review/processing capacity.

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

(a) How the amendment will change this existing administrative regulation: Tiered fee that has been in place since 2005 would be increased. It also includes several clarifications and adds a review component for projects that are not being directly incentivized by the Kentucky Historic Preservation Tax Credit program. Projects that have been largely or fully completed in advance of an application being submitted are not motivated by the incentive and should therefore be excluded. Furthermore, these projects have often implemented design decisions outside of the review and approval process that do not conform to the program requirements. This change to the regulation attempts to curtail or at least limit post project reviews that have little to no opportunity for meaningful consultation.

(b) The necessity of the amendment to this administrative regulation: This emergency regulation reinstates and updates a long-standing but outdated (and recently expired) version. If not corrected, the newly expanded/enhanced Kentucky Historic Preservation Tax Credit Program's implementation will remain at risk. The Kentucky Heritage Council has needed a fee increase for many years to support the administration of this program. The current staffing levels are unsustainable and our delivery of service to our constituents has suffered. The 20-fold increase to the program's cap makes this fee increase even more imperative. Furthermore, it is important that this program remain an incentive for rehabilitation. The agency has experienced issues over the years with applications that are too complete for meaningful consultation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 171.397 provides that the Kentucky Heritage Council can impose fees for processing applications for tax credits, not to exceed the actual cost associated with processing the applications.

(d) How the amendment will assist in the effective administration of the statutes: Current funding levels are not sufficient to maintain adequate levels of staffing/service to carry out the program efficiently. Increasing our fee revenue will support the delivery of service including review/processing capacity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All of the above could be affected by this revised administrative regulation. The Kentucky Historic Preservation Tax Credit is an incentive program and fully optional however, so no one would be required to pay the higher fee unless they chose to participate. State Government, and namely the Kentucky Heritage Council, would greatly benefit from fees that would better address the direct and indirect administrative cost to the agency.

(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 new action. The Part 1 and Part 2 Review Fee would be higher but the process would remain largely unchanged. An exception would be the option of the council to reject a project as ineligible due to substantial levels of completeness.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The higher review fee is tied to the level of incentive

being received by the applicant. The incentive is based on expenditure, so a \$30M project receiving a \$6M Historic Tax Credit will require significantly more review time and coordination than a small project that would be charged (as it is now) a smaller review fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): We have had many conversations with developers and other users of this incentive program about an efficient review process. They consistently tell us that they would be happy to pay more in review fees if that meant we could better administer the program. These funds will support our capacity and provide applicants with better accessibility to staff and support faster review times. This will help projects that are often time sensitive receive the approval needed to move forward.

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

(a) Initially: Minor change. No cost anticipated.

(b) On a continuing basis: Minor change. No cost anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Minor change. No additional funding needed to administer the administrative regulation change.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. This administrative regulation change would directly increase existing fees.

(9) TIERING: Is tiering applied? The Kentucky Historic Preservation Tax Credit was implemented in 2005, and with the exception of owner-occupied projects, this incentive can often be utilized in tandem with the federal credit. Key provisions are: 30% of qualified rehabilitation expenses for owner-occupied residential properties. A minimum investment of \$20,000 is required, with the total credit not to exceed \$60,000 20% of qualified rehabilitation expenses for all other properties, requiring a minimum investment of \$20,000 or the adjusted basis, whichever is greater. The total credit for a project must not exceed \$400,000. "Other" properties include commercial and industrial buildings, income-producing properties, historic landscapes and properties owned by governments and non-profit organizations. Those eligible to apply for the credit include: Individuals, Businesses, Non-profit organizations, Governments. "First purchaser" of a principal residence following rehabilitation: Currently the amount of historic preservation tax credits allowed for all taxpayers for each calendar year is \$5 million. If that limit is exceeded by approved projects, an apportionment formula will be applied to determine the amount of the credit that will be awarded per project. As a result, the final credit awarded to each project may be less than the entire percentage for which the project is eligible. With the program cap increase from \$5 million to \$100 million in the last legislative session, it is unlikely that an apportionment formula will have to be applied.

FISCAL NOTE

(1) What 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 is an incentive program that is not mandatory for any public or private entity to take part in. That said, local governments may participate and earn a transferable tax credit that can be monetized. Local governments currently pay a fee to process Historic Preservation Tax Credit applications. That fee would increase for them as well as private sector applicants.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.397(12) and (14) authorizes the Kentucky Heritage Council to promulgate administrative regulations to implement the certified historic structures rehabilitation tax credit and to impose fees for tax credit applications.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is a relatively minor change to an optional incentive program. No effect anticipated other than a higher and more reasonable fee schedule to support the administration of this popular program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Unsure. We anticipate our workload to increase by at least three times the current amount due to legislative increases in the program cap. Additional revenue will be tied to the number of applications received in a given 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? Unsure. We anticipate our workload to increase by at least three times the current amount due to legislative increases in the program cap. Additional revenue will be tied to the number of applications received in a given year.

(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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: The proposed administrative regulation change would increase the fee at all investment levels to support the basic administration of the program. The number, type and size and investment level of projects received for review from year to year varies dramatically. Most projects are anticipated to be on the low end of the tier meaning that the additional fee will be small on a per project basis. Looking at the program as a whole however, the additional fees should better cover the costs to the agency that are not being covered by the existing tier of fees.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This will result in no cost savings for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This will result in no cost savings for regulated entities.

(c) How much will it cost the regulated entities for the first year? Variable. This is a fee attached to an optional incentive program. Costs to regulated entities are directly tied to the financial benefit they will receive from the Kentucky Historic Preservation Tax Credit program.

(d) How much will it cost the regulated entities for subsequent years? Variable. This is a fee attached to an optional incentive program. Costs to regulated entities are directly tied to the financial benefit they will receive from the Kentucky Historic Preservation Tax Credit program.

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

Cost Savings (+/-): 0

Expenditures (+/-): 0

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. Not applicable. There is no additional cost to charge and/or process the fees.

PUBLIC PROTECTION CABINET
Department of Insurance
(New Administrative Regulation)

806 KAR 17:585. Annual report mental health parity nonquantitative treatment limitation compliance.

RELATES TO: KRS 304.1-050(1), 304.17A-660, 304.17A-669
STATUTORY AUTHORITY: KRS 304.2-110, 304.17A-661
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-661 requires an insurer that issues or renews a health benefit plan to annually report to the commissioner the self-compliance with the federal Mental Health Parity and Addiction Equity Act related to nonquantitative treatment limitations between medical and surgical benefits and mental health substance use disorder benefits to demonstrate that such treatment limitations are applied comparably. This administrative regulation sets forth the format and submission time frame for the data reporting requirements in KRS 304.17A-661.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 304.1-050(1).

(2) "Insurer" is defined by KRS 304.17A-005(29).

(3) "Nonquantitative treatment limitations" as defined by KRS 304.17A-660(3).

Section 2. Data Reporting Requirements. (1) An insurer that issues or renews a health benefit plan and is authorized to write health insurance in this state shall submit an annual report containing the information described in KRS 304.17A-661 on the Nonquantitative Treatment Limitation (NQTL) Reporting Submission Form to the commissioner by April 1st of each year for the previous plan year.

(2) Be submitted in an electronic format prescribed by the Commissioner.

Section 3. Material Incorporated by Reference.

(1) "Nonquantitative Treatment Limitation (NQTL) Reporting Submission Form", 5/2022 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm. This material is also available on the Department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

SHARON P. CLARK, Commissioner
RAY A. PERRY, Secretary

APPROVED BY AGENCY: May 3, 2022

FILED WITH LRC: May 12, 2022 at 2:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on July 21, 2022 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 July 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: Abigail Gall, Executive Advisor, 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: This administrative regulation establishes the manner in which regulated entities are to report to the Department of Insurance their Mental Health Parity comparison report.

(b) The necessity of this administrative regulation: The regulation is necessary to establish the submission form for regulated entities to provide the required information prescribed in KRS 304.17A-661.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-661 requires that any insurer that issued a health benefit plan on or after January 1, 2022 shall report to the Commissioner in a manner and format prescribed through administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates the form for insurers to report to the Commissioner electronically.

(2) If 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: There are currently 12 insurers offering health benefit plans.

(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 that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These insurers are responsible for filing with the department the incorporated form that captures the requested information regarding Mental Health Parity NQTL Comparison of benefits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities should already be completing similar reporting under federal law and so they should have the proper processes in place. This should not cost anything for the entities other than administrative costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be reporting to the Department the appropriate information to meet the statutory requirements set forth in KRS 304.17A-661.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: This does not associate a cost on the department to implement this administrative regulation's provisions.

(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 on-going 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 establishes any fees or directly or indirectly increases 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 health benefit plans in Kentucky (12).

FISCAL NOTE

(1) What 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 implementer 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, 304.17A-661

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 should not generate any new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue generated by this administrative regulation is expected to be minimal.

(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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This number is unknown, but the Department does not foresee any cost or savings increase or decrease.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This number is unknown, but the Department does not foresee any cost or savings increase or decrease.

(c) How much will it cost the regulated entities for the first year? The cost should be minimal, if any.

(d) How much will it cost the regulated entities for subsequent years? The cost should be minimal, if any.

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

Cost Savings (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation should not have a major economic impact as defined above because regulated entities should already have the administrative abilities to conduct the comparative analysis as described in KRS 304.17A-661 and as required under federal law.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate: Mental Health Parity and Addiction Equity Act of 2008, 42 U.S.C. sec. 300gg-26, as amended, and any related federal regulations, as amended, including but not limited to 45 C.F.R. secs. 146.136, 147.160, and 156.115(a)(3).

(2) State compliance standards. The state compliance standards are as described in KRS 304.17A-661.

(3) Minimum or uniform standards contained in the federal mandate. A health benefit plan issued or renewed on or after January 1, 2022, that provides coverage for treatment of a mental health condition shall provide coverage of any treatment of a mental health condition under terms or conditions that are no more restrictive than the terms or conditions provided for treatment of a physical health condition.

(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.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Human Resource Management
(New Administrative Regulation)**

900 KAR 1:050. Child and adult protection employees subject to state and national criminal background checks.

RELATES TO: KRS 18A.095, 194A.005(1), 194A.062, 194A.065(1)

STATUTORY AUTHORITY: KRS 194A.062(2), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.062(2) requires front-line staff, as defined in KRS 194A.065(1), to submit to national and state fingerprint-supported criminal background checks performed by the Department of Kentucky State Police and the Federal Bureau of Investigation. KRS 194A.062(5) requires the cabinet to promulgate an administrative regulation to implement this requirement. This administrative regulation establishes requirements for fingerprint-based state and national criminal background checks for prospective and current front-line child and adult protection employees.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 194A.005(1).

(2) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo contendere to any felony, misdemeanor during the preceding seven (7) years, or offense, the nature of which indicates that the employee constitutes an unreasonable and immediate risk to the health or safety of vulnerable children or adults, as determined by the cabinet.

(3) "Front-line staff" is defined by KRS 194A.065(1).

(4) "Rap back service" means a notification program in which the cabinet or responsible agency, upon approval to participate in the program, will be informed if an individual who has undergone a fingerprint-based criminal background check in accordance with the requirements of this administrative regulation, and whose fingerprints are retained by the Department of Kentucky State Police or the Federal Bureau of Investigation, is subsequently

arrested.

(5) "Responsible agency" means an office or department within the cabinet, or an entity under contract with the cabinet, that employs or offers a job to an individual for a front-line staff position.

Section 2. Requirement for Criminal Background Checks. (1) As a condition of initial application for employment or continued employment either directly or by contract in a position that is equivalent to being front-line staff, the cabinet or responsible agency shall require a prospective or current front-line staff employee, including contract staff, to submit to a fingerprint-based state and national criminal background check:

(a) After the individual is offered a job but before he or she begins working; and

(b) At least one (1) time during each ten (10) year period for a current employee or contract staff.

(2) The responsible agency that requests a fingerprint-based state and national criminal background check on behalf of a prospective or current employee shall incur all fees included in the actual cost of each background check requested, including the rap back service.

(3) The cabinet or responsible agency shall not employ directly or by contract an individual for a front-line staff position if the individual:

(a) Refuses to consent to a fingerprint-based state and national criminal background check; or

(b) Is found to have a disqualifying offense.

(4) The cabinet or responsible agency shall notify each prospective or current employee determined to have a disqualifying offense.

Section 3. Disqualification for Other Criminal Offenses or Factors. The cabinet or responsible agency shall not be obligated to employ or offer employment to an individual with a criminal offense not specifically listed in Section 1(2) of this administrative regulation or other factor that bears upon the fitness of the individual to work in a front-line staff position.

Section 4. Challenges to Criminal History Record Information. An individual subject to a criminal background check required by KRS 194A.062(2) and this administrative regulation shall have the right to request and inspect his or her criminal history record and to request correction of any inaccurate information.

Section 5. Rehabilitation Review. (1) A prospective or current cabinet employee found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(2) A prospective or current cabinet employee may submit a written request for a rehabilitation review to the Office of Human Resource Management no later than fourteen (14) calendar days from the date of notice of a disqualifying offense issued pursuant to Section 2(4) of this administrative regulation.

(3) A current cabinet employee who requests a rehabilitation review may be retained on staff if the employee is assigned duties that do not include unsupervised contact with a child or vulnerable adult.

(4) The request for a rehabilitation review shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;

2. The number of years since the occurrence of the disqualifying offense;

3. The age of the offender at the time of the disqualifying offense;

4. Evidence that the individual has pursued or achieved rehabilitation with regard to the disqualifying offense; and

5. Any other circumstances surrounding the offense;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or

documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently and safely.

(5) A rehabilitation review shall be conducted by a committee of three (3) employees of the Office of Human Resource Management.

(6) The committee shall consider the information required under subsection (4) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying offense;

(b) The lack of a relationship between the disqualifying offense and the:

1. Position for which the prospective employee has applied; or

2. Cabinet employee's current position; and

(c) Evidence that the prospective or current cabinet employee has pursued or achieved rehabilitation with regard to the disqualifying offense.

(7) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the Office of Human Resource Management shall send the committee's determination on the rehabilitation waiver to the prospective or current employee.

(8) The prospective or current employee may appeal the results of a rehabilitation review to the Personnel Board in accordance with KRS 18A.095.

Section 6. Pardons and Expungement. An applicant or current employee who has received a pardon for a disqualifying offense or has had the record expunged may be employed in a front-line staff position.

TRESA STRAW, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 25, 2022

FILED WITH LRC: April 26, 2022 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 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 July 18, 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 July 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: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for fingerprint-based state and national criminal background checks for prospective and current

cabinet employees who are front-line staff, as defined by KRS 194A.065(1).

(b) The necessity of this administrative regulation: Senate Bill 40 from the 2020 Regular Session of the General Assembly amended KRS 194A.062 to require that front-line staff, as defined by KRS 194A.065, shall submit to national and state fingerprint-supported criminal background checks and amended relevant statutes relating to private child-caring and child-placing to also require background checks of individuals meeting the statutory definition of “staff members.” The utilization and implementation of additional fingerprint-based background checks was delayed during the COVID-19 pandemic and Kentucky operated under a federal waiver in which name-based background checks were completed temporarily. However, utilization of the National Background Check Program has resumed and capacity has been increased to include these additional checks.

(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 requirements for fingerprint-based state and national criminal background checks for prospective and current front-line staff.

(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 requirements for fingerprint-based state and national criminal background checks for prospective and current front-line staff.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department for Community Based Services and the Office of Human Resource Management in the Cabinet for Health and Family Services are the only agencies affected by this administrative regulation. Approximately 1,800 front-line staff are expected to be impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A prospective or current front-line staff employee, including contract staff, will be required to submit to a fingerprint-based state and national criminal background check after an individual is offered a job but before he or she begins working and at least one time during each ten year period of employment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Staff will not have to pay for these background checks. The initial cost to the cabinet is estimated to be approximately \$115,000 and the ongoing cost is estimated to be approximately \$25,000 per year due to high staff turnover rates experienced recently. As turnover decreases, this cost will also decrease.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The processes contained in this administrative regulation will ensure that staff who are working closely with families and children across the commonwealth have undergone a thorough check of state and national registries and records and no disqualifying offenses against them were found. This administrative regulation also ensures the cabinet’s

compliance with statute.

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

(a) Initially: Approximately \$115,000.

(b) On a continuing basis: Approximately \$25,000 per year due to high staff turnover rates experienced recently and less when turnover decreases and staffing numbers stabilize.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is not an increase in fees, but this administrative regulation does include a new fee paid by the cabinet. The cabinet will absorb costs associated with these required background checks.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does include a new fee paid by the cabinet. The cabinet will absorb costs associated with these required background checks.

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation applies equally to all individuals meeting the statutory definition of “front-line staff” established by KRS 194A.065(1).

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services and the Office of Human Resource Management in the Cabinet for Health and Family Services are affected by this administrative regulation. Approximately 1,800 front-line staff are expected to be impacted by this administrative regulation. These checks are administered through the Kentucky State Police.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 194A.062(2), (5).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue. Fees collected by the Kentucky State Police for the purpose of conducting the background check do not exceed the actual cost of performing the check.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue. Fees collected by the Kentucky State Police for the purpose of conducting the background check do not exceed the actual cost of performing the check.

(c) How much will it cost to administer this program for the first year? \$115,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$25,000 per year due to high staff turnover rates experienced recently. As staff turnover decreases, this cost will also decrease.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? This will cost the cabinet approximately \$115,000 to implement.

(d) How much will it cost the regulated entities for subsequent years? This will cost the cabinet approximately \$25,000 per year in subsequent years.

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

Cost savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation is not anticipated to have an economic impact of \$500,000 or more.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(New Administrative Regulation)**

922 KAR 1:290. Background checks for private child-caring or child-placing staff members.

RELATES TO: KRS 17.165, 17.500-17.580, 199.011, 199.642, Chapters 209, 506, 511, 515, 520, 525, 527, 529, 530, 336.220, 620.050-620.120, 34 U.S.C. 20921, 45 C.F.R. 98.43

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 199.642(8), 42 U.S.C. 671(a)(20)(D)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.640(5)(a) requires the secretary to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies relating to the health and safety of all children in the care of the facility or agency, the basic components for a quality program, and any other factors as may be necessary to promote the welfare of children cared for or placed by the agencies and facilities. KRS 199.642(8) requires the cabinet to promulgate an administrative regulation necessary to implement child-caring or child-placing staff member background checks in accordance with 42 U.S.C. 671(a)(20)(D). This administrative regulation establishes background check requirements for child-caring and child-placing staff members, reporting requirements, and appeals.

Section 1. Definitions. (1) "Address check" means a cabinet search of the Kentucky or National Sex Offender Registry to determine if a person's residence is a known address of a registered sex offender.

(2) "Cabinet" is defined by KRS 199.011(3).

(3) "Child-caring facility" is defined by KRS 199.011(5).

(4) "Child-placing agency" is defined by KRS 199.011(6).

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

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

(7) "Staff member" is defined by KRS 199.642(1).

Section 2. Applicability, Implementation, and Enforcement. (1) This administrative regulation shall apply to child-caring or child-placing providers and their prospective and current staff members.

(2) A person who is a child-caring or child-placing staff member prior to the effective date of this administrative regulation shall submit to and complete background checks in accordance with this administrative regulation no later than July 1, 2023.

(3) A prospective child-caring or child-placing staff member shall complete the background check process required in accordance with this administrative regulation and have been found to have no disqualifying offense prior to becoming a child-caring or child-placing staff member.

(4) To assure timely processing of background checks, the cabinet shall prioritize the processing of background checks for prospective child-caring and child-placing staff members.

(5) A current or prospective child-caring or child-placing staff member shall be subject to background checks in accordance with Sections 3 and 4 of this administrative regulation.

Section 3. Procedures and Payments. (1) To initiate the process of obtaining a background check on a prospective or current child-caring or child-placing staff member, the provider shall:

(a) Request that the staff member provide a copy of his or her driver's license or other government-issued photo identification and verify that the photograph clearly matches the staff member;

(b) Request that the prospective or current staff member complete and sign the:

1. DPP-500, Private Child-Caring or Child-Placing Staff Member Waiver Agreement and Statement; and

2. DPP-501, Disclosures to be Provided to and Signed by the Applicant Private Child-Caring or Child-Placing Staff Member; and

(c) Log on to the NBCP portal and enter the prospective or current staff member's demographic information for a check of the:

1. Child abuse and neglect central registry pursuant to 922 KAR 1:470;

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

3. Sex Offender Registry established in accordance with KRS 17.500 through 17.580.

(2)(a) In accordance with KRS 199.642, KRS 336.220, and 42 U.S.C. 671(a)(20)(D), a child-caring or child-placing provider shall submit payment via credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If a staff member's rap back has not expired, a new fingerprint check shall not be required.

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

(3) Upon submission of payment in accordance with subsection (2) of this section, the staff member shall:

(a) Have no more than thirty (30) calendar days from the date of payment pursuant to subsection (2) of this section to submit his or her fingerprints at an authorized collection site for NBCP; and

(b) Present his or her driver's license or other government-issued photo identification to the designated agent at an authorized collection site prior to fingerprint submission.

(4) Upon completion of the background checks in accordance with this section and Section 4 of this administrative regulation, the cabinet:

(a) Shall provide notice to the provider within seven (7) business days in accordance with KRS 199.642(5) that the prospective or current staff member is:

1. Eligible for hire or continuation of employment; or

2. Not eligible for hire or continued employment if the prospective or current staff member is found by the cabinet to have a disqualifying background check result in accordance with Section 5 of this administrative regulation;

(b) May release any record of state criminal history found in the files of the Kentucky centralized criminal history record information system to the provider or another entity included on the waiver in accordance with subsection (1)(b) of this section; and

(c) Shall, upon receipt of written request from an applicant, send a copy of a KSP or FBI criminal history report to the prospective or current staff member by certified mail, restricted delivery service. The staff member shall show proof of identity and sign to receive his or her criminal history report from the local post office.

(5) A provider shall not be obligated to employ or offer employment to an individual who has been found by the cabinet to be eligible for hire pursuant to subsection (4)(a)1. of this section.

(6) A staff member may submit a request for a protection and permanency record in accordance with 922 KAR 1:510.

(7)(a) If the NBCP portal is not operational, the cabinet may request a federal waiver that would allow a prospective staff member to undergo a:

1. Child abuse and neglect central registry check pursuant to 922 KAR 1:470;

2. Criminal records check conducted by the Kentucky Justice and Public Safety Cabinet or Administrative Office of the Courts;

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

4. Sex Offender Registry check in accordance with KRS 17.500 through 17.580.

(b) A background check completed through the NBCP portal shall be required as soon as operational.

Section 4. Checks of Other States. (1) A prospective or current staff member who resides in or has resided in another state within the last five (5) years shall:

(a) Request from each state of current or prior residency, in accordance with the state's laws, policies, and procedures, with a courtesy notice to the cabinet:

1. An in-state criminal records check by:

a. Means of fingerprints for the state of residence; or

b. Any means accepted by a state of prior residency;

2. A check of the state's sex offender registry or repository; and

3. A check of the state-based child abuse and neglect registry and database; and

(b) Direct results of the checks required in paragraph (a) of this subsection to the Department for Community Based Services, Division of Protection and Permanency, 275 East Main Street, 3E-A, Frankfort, Kentucky 40621, or securely send results to privateagencyliaison@ky.gov.

(2) If the prospective or current staff member's current or prior state of residency participates in the FBI's National Fingerprint File Program, the staff member shall be exempt from the requirements of subsection (1)(a)1. of this section.

(3) In accordance with KRS 336.220, a child-caring or child-placing provider shall pay a fee charged by another state for a background check as permitted pursuant to 45 C.F.R. 98.43(f) for a prospective or current staff member.

(4) If another state fails to respond to a check submitted in accordance with subsection (1) of this section within thirty (30) calendar days from the date of the background check's request as verified by the staff member, the cabinet shall:

(a) Process a staff member's background checks and issue notice to the provider in accordance with Section 3(4) of this administrative regulation to ensure compliance with 45 C.F.R. 98.43(e); and

(b) Send notice in accordance with Section 3(4) of this administrative regulation if:

1. Another state provides requested background check results at a later date; and

2. A disqualifying background check result is identified.

Section 5. Disqualifying Background Check Results. (1) Unless a rehabilitative review pursuant to Section 8 of the administrative regulation determines the individual is eligible to be hired, an individual shall be ineligible to be hired or otherwise serve as a

staff member if the individual:

(a) Meets a criterion specified in 45 C.F.R. 98.43(c);

(b) Has a felony conviction, entered an Alford plea, a plea of guilty, or a plea of nolo contendere, related to:

1. A spouse, a child, sexual violence, or death as established in 42 U.S.C. 671(a)(2); or

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

3. KRS Chapter 209, protection of adults;

4. KRS Chapter 506, inchoate offenses;

5. KRS Chapter 511, battery and related offenses;

6. KRS Chapter 515, robbery;

7. KRS Chapter 520, escape and other offense related to custody;

8. KRS Chapter 525, riot, disorderly conduct, and related offenses;

9. KRS Chapter 527, offenses relating to firearms and weapons;

10. KRS Chapter 529, prostitution offenses; or

11. KRS Chapter 530, family offenses, excluding KRS 530.050;

(c) Has a criminal conviction relating to child abuse or neglect;

(d) Has a civil judicial determination related to child abuse or neglect;

(e) Has been found to have:

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

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

(f) Has been convicted of, or has entered an Alford plea, a plea of guilty, or a plea of nolo contendere to:

1. A sex or violent crime pursuant to KRS 17.165; or

2. An offense under a criminal statute of the United States or of another state similar to an offense specified in this paragraph;

(g) Is listed on the:

1. Central registry established in accordance with 922 KAR 1:470; or

2. Another state's state-based child abuse and neglect registry or database;

(h) Has an open warrant for a disqualifying offense established in this subsection; or

(i) Has a pending charge for a criminal offense specified in this subsection.

(2) An individual who has received a pardon for a disqualifying offense, has had the record expunged, or has evidenced dismissal of a warrant or disqualifying charge may serve as a staff member.

(3) Unless there is a pending informal review, rehabilitative review, or appeal in accordance with Section 6 of this administrative regulation, a provider shall be subject to a cabinet action against the provider's license in accordance with 922 KAR 1:305, if the provider employs a staff member who is ineligible for employment pursuant to subsection (1) of this section.

Section 6. Notice of a Disqualifying Background Check Result and Appeals. (1) The cabinet shall notify each prospective or current staff member determined to have a disqualifying background check result in accordance with Section 5 of this administrative regulation.

(2) In addition to the cabinet's notification in accordance with subsection (1) of this section, a provider that receives notice from the cabinet that a prospective or current staff member has been determined to have a disqualifying background check result in accordance with Section 5 of this administrative regulation shall notify the staff member of the cabinet's determination within three (3) business days of receipt of the notice.

(3) A prospective or current staff member who receives notice of having a disqualifying background check result in accordance with Section 5 of this administrative regulation may:

(a) Challenge the accuracy of the cabinet's determination by submitting a written request for informal review, including any information the individual wishes to be considered, to the Department for Community Based Services, Division of Protection and Permanency, 275 East Main Street, 3E-A, Frankfort, Kentucky 40621, within ten (10) calendar days of the date of notice in

accordance with subsection (1) of this section; or

(b) Request a rehabilitative review pursuant to Section 8 of this administrative regulation.

(4) Upon completion of an informal review upon request pursuant to subsection (3)(a) of this section, the cabinet shall provide written notice of the cabinet's decision to uphold or rescind the notice of disqualifying background check result to the prospective or current staff member.

(5) A prospective or current staff member may appeal the results of an informal review or a rehabilitative review pursuant to Section 8 of this administrative regulation, in accordance with 922 KAR 1:480.

(6) If a prospective or current staff member wishes to challenge the accuracy of a criminal background check, the cabinet shall refer the individual to the appropriate state or federal law enforcement agency.

(7) If a prospective or current staff member challenges the finding that he or she is the true subject of the results from a registry or repository check, the cabinet shall refer the individual to the agency responsible for maintaining the registry or repository.

Section 7. Termination or Relocation of a Staff Member upon Receipt of Notice of a Disqualifying Background Check Result. (1) If a prospective or current staff member has not requested an informal review or a rehabilitative review in accordance with Section 8 of this administrative regulation, the child-caring or child-placing provider shall:

(a) Terminate the staff member no later than ten (10) calendar days after receipt of notice of the cabinet's determination, including the disqualifying background check result; and

(b) Use the NBCP to provide electronic notification to the cabinet affirming the staff member's dismissal within three (3) business days of termination.

(2)(a) If a prospective or current staff member requests an informal review or a rehabilitative review in accordance with Section 8 of this administrative regulation, the child-caring or child-placing provider:

1. May retain the staff member pending resolution of the informal review or rehabilitative review; and

2. Shall ensure that the staff member:

a. Is subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one contact with a child in care.

(b) A provider shall terminate the staff member if the:

1. Informal review upholds the cabinet's determination of a disqualifying background check result, or the rehabilitative review committee does not grant a waiver; and

2. Staff member does not request an administrative hearing in accordance with Section 6(5) of this administrative regulation, in which the provider shall terminate the staff member no later than the thirty-first calendar day following written notice of the results of the informal review or rehabilitative review.

(c) If a staff member requests an administrative hearing in accordance with Section 6(5) of this administrative regulation to appeal the decision from an informal review or rehabilitative review, the provider:

1. May retain the staff member pending the appeal's resolution if the staff member:

a. Remains subject to direct, onsite supervision; or

b. Does not have duties or proximity that involves one-on-one contact with a child in care; and

2. Shall terminate the staff member no later than the thirty-first calendar day from the issuance of the final order if the staff member does not prevail.

(d) Using the NBCP, the provider shall provide electronic notification to the cabinet affirming the individual's dismissal within three (3) business days of the termination.

Section 8. Rehabilitative Review. (1)(a) A prospective or current staff member found to have a disqualifying background check result shall be eligible for consideration of rehabilitation under an independent review process.

(b) Consideration of a disqualifying background check result

under the rehabilitative review process described in this section shall not apply to:

1. A disqualifying felony offense that occurred less than ten (10) years prior to the date of the criminal background check;

2. Any disqualifying felony or misdemeanor offense related to abuse, neglect, or exploitation of a child;

3. Registration as a sex offender under federal law or under the law of any state;

4. A sex or violent crime as defined by KRS 17.165; or

5. A child abuse and neglect substantiated finding that:

a. Occurred less than five (5) years prior to the date of the registry check; or

b. Involved:

(i) Sex abuse or sex exploitation of a child;

(ii) A child fatality related to abuse or neglect; or

(iii) A near fatality of a child related to abuse or neglect.

(2)(a) A prospective or current staff member may submit a written request for a rehabilitative review to the cabinet no later than fourteen (14) calendar days from the date of the notice of the cabinet's determination issued pursuant to Section 3(4) or 6(4) of this administrative regulation regarding a determination of a disqualifying background check result.

(b) If a prospective or current staff member requests a rehabilitative review, the staff member:

1. May be retained by the provider pending the rehabilitative review; and

2. Shall be subject to restrictions and termination in accordance with Section 7 of this administrative regulation.

(3) The request for a rehabilitative review shall include the following information:

(a) A written explanation of each disqualifying background check result, including:

1. A description of the events related to the disqualifying background check result;

2. The number of years since the occurrence of the disqualifying background check result;

3. The age of the individual at the time of the disqualifying background check result; and

4. Any other circumstances surrounding the disqualifying background check result;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable;

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently; and

(e) Evidence that the individual has pursued or achieved rehabilitation with regard to a disqualifying background check result.

(4) A rehabilitative review shall be conducted by a committee of three (3) employees of the cabinet, none of whom were responsible for determining that the individual has a disqualifying background check result.

(5) The committee shall consider the information required under subsection (3) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying background check result;

(b) The lack of a relationship between the disqualifying background check result and the position for which the individual has applied; and

(c) Evidence that the applicant has pursued or achieved rehabilitation with regard to the disqualifying background check result.

(6) No later than thirty (30) calendar days from receipt of the written request for the rehabilitative review, the cabinet shall send the committee's determination on the rehabilitation waiver to the prospective or current child care staff member.

(7) The decision of the committee shall be subject to appeal in accordance with Section 6(5) of this administrative regulation.

(8) A provider shall not be obligated to accept an individual who is granted a waiver pursuant to this section as a staff member.

Section 9. Status of Employment. (1) A provider shall maintain the employment status of each staff member who has submitted to a fingerprint-based criminal background check by reporting the status using the NBCP Web-based system.

(2) The cabinet shall inspect a provider to verify conformity with this administrative regulation.

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

(a) "DPP-500, Private Child-Caring or Child-Placing Staff Member Waiver Agreement and Statement", 04/2022; and

(b) "DPP-501, Disclosures to be Provided to and Signed by the Applicant Private Child-Caring or Child-Placing Staff Member", 04/2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbcs/Pages/default.aspx>.

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

APPROVED BY AGENCY: April 25, 2022

FILED WITH LRC: April 26, 2022 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 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 July 18, 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 July 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: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for fingerprint-based state and national criminal background checks for prospective and current private child-caring and child-placing staff members, as defined by KRS 199.642(1), and includes reporting requirements and an appeals process. This administrative regulation also incorporates forms required in order to obtain a background check.

(b) The necessity of this administrative regulation: 42 U.S.C. 671(a)(20)(D) includes that any child-care institution, including a group home, residential treatment center, shelter, or other congregate care setting, conduct criminal records checks, including fingerprint-based checks of national crime information databases and checks on any adult working in these facilities. Senate Bill 40 from the 2020 Regular Session of the General Assembly amended

KRS 199.642(2) to require that private child-caring and child-placing staff members, as defined by KRS 199.642(1), shall submit to national and state fingerprint-supported criminal background checks. The utilization and implementation of additional fingerprint-based background checks was delayed during the COVID-19 pandemic and Kentucky operated under a federal waiver in which name-based background checks were completed temporarily. However, utilization of the National Background Check Program has resumed and capacity has been increased to include checks for these specific individuals and Department for Community Based Services front-line staff.

(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 requirements for fingerprint-based state and national criminal background checks for these prospective and current staff members.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing requirements for fingerprint-based state and national criminal background checks for these staff members.

(2) If 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: Private child-caring or child-placing agencies will be required to have prospective and current staff undergo state and national criminal background checks. Data from the Office of Inspector General states that there are 1,352 private child-caring employees statewide and 1,066 private child-placing employees statewide. Approximately 180 agencies will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A current private agency staff member meeting the definition established in KRS 199.642(1) will be required to submit to a fingerprint-based state and national criminal background check by July 2, 2023. A prospective private child-caring or child-placing staff member shall complete the background check process required in accordance with this administrative regulation and have been found to have no disqualifying offense prior to becoming a child-caring or child-placing staff member.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cabinet data indicates approximately 2,500 staff members being impacted by this requirement across approximately 180 private agencies. The cost to the private agencies is \$63.25 per check and includes a continuous rap back system check for five (5) years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The processes and requirements contained in this administrative regulation will ensure that private agency staff who are working closely with vulnerable children, sometimes day and night, have undergone a thorough check of state and national registries and records and no disqualifying offenses against them were found. This administrative regulation also ensures compliance with statute.

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

(a) Initially: This administrative regulation includes administrative duties for the cabinet, but the administrative cost will

be absorbed within appropriations.

(b) On a continuing basis: The administrative cost will be absorbed within appropriations.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is not an increase in fees, but this administrative regulation does establish a new fee for private child-care and child-placing agencies. The cost of this statutorily-required national and state background check is \$63.25 per check.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does include a new fee for private child-care and child-placing agencies. The cost of this statutorily-required national and state background check is \$63.25 per check.

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation applies equally to all individuals meeting the statutory definition of "staff member" established by KRS 199.642(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 671(a)(20)(D)

2. State compliance standards. KRS 194A.050(1), 199.640(5)(a), 199.642(8)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 671(a)(20)(D) includes that any child-care institution, including a group home, residential treatment center, shelter, or other congregate care setting, conduct criminal records checks, including fingerprint-based checks of national crime information databases and checks on any adult working in these facilities.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, this administrative regulation imposes additional requirements that are necessary for compliance with state law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation necessary for compliance with federal and state laws regulating private child-caring and child-placing staff.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation. The Department for Community Based Services regulates these providers and staff and the Office of Inspector General houses the National Background Check Program in Kentucky and licenses these private agencies, ensuring compliance with regulatory requirements. These checks are administered through the Kentucky State Police.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.640(5)(a), 199.642(8), 42 U.S.C. 671(a)(20)(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? This administrative regulation will generate no revenue. Fees collected by the Kentucky State Police for the purpose of conducting the background check do not exceed the actual cost of

performing the check.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue. Fees collected by the Kentucky State Police for the purpose of conducting the background check do not exceed the actual cost of performing the check.

(c) How much will it cost to administer this program for the first year? Minimal administrative costs absorbed by the cabinet.

(d) How much will it cost to administer this program for subsequent years? Minimal administrative costs absorbed by the cabinet.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? This administrative regulation seeks to ensure the protection of children and the cost savings of preventing the maltreatment of children cannot be estimated with certainty.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation seeks to ensure the protection of children and the cost savings of preventing the maltreatment of children cannot be estimated with certainty.

(c) How much will it cost the regulated entities for the first year? The requirements contained in this administrative regulation will be effective with the administrative regulation for new staff. Regulated entities will have until July 2, 2023, to meet the requirements contained in this administrative regulation for existing staff. Therefore, the cost of \$63.25 per background check will be realized as new staff are hired and as an agency chooses to conduct the checks for already-existing staff prior to July 2, 2023.

(d) How much will it cost the regulated entities for subsequent years? The cost of these background checks realized by regulated entities is \$63.25 per background check. Cabinet data indicates approximately 2,500 staff members being impact by this requirement across approximately 180 private agencies. Staffing is expected to increase as higher rates for care have been provided, approximately a staffing increase of 500 for fiscal estimate purposes. This cost includes a continuous rap back system check for five (5) years (at least five years of continuous background checks without additional fee). Dividing 3,000 staff by 180 agencies multiplied by \$63.25 results in an average cost of \$1,054.17 per regulated entity to be realized over the next 15 months.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation is not anticipated to have an economic impact of \$500,000 or more. The average cost per regulated entity is estimated to be \$1,054.17 to meet the requirements of this administrative regulation.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of MAY 10, 2022

Call to Order and Roll Call

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 10, 2022 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 Gordon, and Mary Lou Marzian.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Steven Pulliam, General Counsel, Executive Branch Ethics Commission; Christopher Harlow, Executive Director, Kentucky Board of Pharmacy; Kevin Winstead, Commissioner, Department of Professional Licensing; Kelly Jenkins, Executive Director, Jeffrey Prather, General Counsel, Kentucky Board of Nursing; Stephen Curley, Executive Director, Kentucky Board of Physical Therapy; Lora Arnold Parks, Chair, August Pozgay, Board Counsel, Kentucky Board of Licensure and Certification for Dietitians and Nutritionists; Tim Cesario, Chairman, Kentucky Board of Alcohol and Drug Counselors; Elizabeth Morgan, Executive Director, Board of Medical Imaging and Radiation Therapy; Steven Fields, Staff Attorney, Rich Storm, Commissioner, Jenny Gilbert, Executive Assistant, Kentucky Department of Fish and Wildlife Resources; Todd Allen, General Counsel, Matthew Courtney, Policy Advisor, Kentucky Department of Education; Duane Hammons, Assistant Director, John Ghaelian, General Counsel, Kentucky Labor Cabinet; Kevin Sharkey, Staff Attorney, Frankie Huffman, Board Member, Kentucky Protection and Advocacy for Individuals with Developmental Disabilities Board; Tom Underwood, State Director, National Federation of Independent Business; Rachael Ratliff, Regulations Coordinator, Department for Behavioral Health, Development and Intellectual Disabilities; Laura Begin, Staff Assistant, Misty Sammons, Division Director, Andrea Day, Assistant Director, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, May 10, 2022, 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 Workplace Standards: Labor Standards; Wages and Hours

803 KAR 001:006. Employer-employee relationship. John Ghaelian, general counsel, and Duane Hammons, assistant director, represented the department. Tom Underwood, state director, National Federation of Independent Businesses, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Hammons stated that the existing framework to determine an employer – employee relationship consisted of a series of questions to be considered through a holistic approach. This version updated the questions to add consideration of permanency of the working relationship. These questions were commensurate with the federal standards; however, Kentucky did not necessarily have to comply with these federal standards. The issue of determining an employer – employee relationship, without the permanency component, had led to numerous misclassifications. Anyone classified as an independent contractor was not subject to the provisions of KRS Chapter 337.

In response to questions by Representative Bridges, Mr. Hammons stated that this administrative regulation was intended to protect employees from nonpayment of wages and other violations of KRS Chapter 337. Clarity was needed to aid in the determination of employer – employee relationships. Representative Bridges stated that this could force those who had chosen to be independent contractors into being classified as employees. Mr. Ghaelian stated that no one (1) factor was weighted more strongly than the others in making this holistic determination. The wishes of a person who chose to be classified as an independent contractor were part of the consideration process. Representative Bridges stated that this was subjective, vague, and gave more power to the Labor Cabinet, rather than to the individual, regarding classification. Additionally, this seemed like a statutory, not a regulatory issue because the legislature had considered this issue in the past and had not passed this type of legislation.

Senator Yates stated that it was important to have clear standards for determining the employer – employee relationship. This administrative regulation was commensurate with federal standards and standards used by the court system. In response to

a question by Senator Yates, Mr. Hammons stated that this version was for clarification based on the federal standards and legal precedents.

In response to questions by Senator Raque Adams, Mr. Hammons stated that the problem of misclassification had become more prevalent for the department for at least the past four (4) years. Mr. Ghaelian stated that this administrative regulation received public comments from two (2) commenters. The need for clarity precipitated this change in conjunction with this administrative regulation needing amendment due to sunset provisions.

In response to a question by Co-Chair West, Mr. Ghaelian stated that the intent of this administrative regulation was to clarify the employer – employee relationship.

In response to a question by Co-Chair Hale, Mr. Underwood stated that this version of this administrative regulation would make the process of determining the employer – employee relationship more ambiguous, not less. Small businesses could be negatively impacted, and this version might create a chilling effect regarding hiring small businesses.

In response to a question by Co-Chair West, Mr. Underwood stated that most small businesses, especially sole proprietors, were independent contractors. Small businesses were concerned that they might become classified as employees. Most small businesses did not have compliance officers available to ensure compliance with KRS Chapter 337.

Senator Yates stated that, if permanency was already a standard used in adjudicating employment matters, it would seem not to change provisions if it were added to this administrative regulation. The department would consider the totality of the relationship, including things like future contract expectations. In response, Mr. Underwood stated that there was a major labor shortage state wide, and this administrative regulation could cause unintended harm.

In response to a question by Co-Chair Hale, Mr. Underwood requested that this administrative regulation be deferred.

In response to a question by Co-Chair West, Mr. Ghaelian stated that this administrative regulation was codifying requirements already used by the court system.

In response to questions by Co-Chair West, Senator Yates stated that “totality of the circumstances” was the phrased used in case law. Mr. Ghaelian stated that this administrative regulation was to comply with certification requirements and to clarify requirements. The department preferred not to defer.

In response to questions by Senator Yates, Mr. Ghaelian stated that the department would prefer not to defer consideration of this administrative regulation. Deferral might pose a problem because the corresponding administrative regulation will expire in September.

Senator Alvarado stated that this issue had been proposed by the General Assembly in the past without legislation being passed, which implied that this administrative regulation was inappropriate.

In response to questions by Senator Raque Adams, Mr. Ghaelian stated that the department did not amend this administrative regulation in response to the public comments, which were considered by the agency. The department preferred not to defer.

Representative Bridges stated that this matter should be established through statute, not administrative regulation. The cabinet was stepping beyond its authority. The department should consider deferral. It was the cabinet's responsibility to enforce decisions made by the legislature, and more stakeholders needed to be involved in the development of these policies. This would do a disservice to independent contractors and employers.

In response to a question by Co-Chair Hale, Mr. Ghaelian stated that the agency respectfully did not agree to defer.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A.

Senator Alvarado made a motion, seconded by Co-Chair West, 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.

Representative Bridges explained his yes vote. He would have preferred that this administrative regulation had been deferred. This was an attempt to make, rather than enforce, the law.

Senator Yates explained his no vote. There seemed to be authority for this administrative regulation, but he stated that he was disappointed that the agency would not defer.

Co-Chair West explained his yes vote. This finding of deficiency meant that this administrative regulation was on a fast track to be found null, void, and unenforceable by the General Assembly.

Co-Chair Hale explained his yes vote. This subcommittee did not like to find administrative regulations deficient and did so only rarely. There had been sufficient opportunity for deferral; therefore, deficiency was the only option left to this subcommittee.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 7 was added to this administrative regulation to reflect the finding of deficiency.

Administrative Regulations Reviewed by this Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Executive Branch Ethics Commission

009 KAR 001:070. Standards of ethical conduct for transition team members and disclosure form. Steven Pulliam, general counsel, 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; and (2) to delete the Transition Team Lead Designation form, which did not seem to be statutorily required. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:440. Legend drug repository. Chris Harlow, executive director, represented the board.

In response to questions by Representative Marzian, Mr. Harlow stated that this program authorized the donation of high-cost prescription medications by pharmacies and patients for distribution to indigent patients.

In response to questions by Senator Yates, Mr. Harlow stated that donated prescription medications must be unexpired and in the original packaging. Donated prescription medications included treatments for a range of conditions and were not limited to specific conditions.

A motion was made and seconded to approve the following amendments: 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. Without objection, and with agreement of the agency, the amendments were approved.

Board of Speech-Language Pathology and Audiology

201 KAR 017:110. Telehealth and telepractice. Kevin Winstead, commissioner, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 020:260E. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing. Jeff Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend: (1) the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 3 to conform to Senate Bill 10 from the 2022 Regular Session of the General Assembly; and (2) Section 3(3)(a) and (b) for consistency with Executive Order 2021-913. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:480E. Licensure of graduates of foreign nursing schools.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with: (1) Senate Bill 10 from the 2022 Regular Session of the General Assembly; and (2) the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 020:480. Licensure of graduates of foreign nursing schools.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with: (1) Senate Bill 10 from the 2022 Regular Session of the General Assembly; and (2) the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy

201 KAR 022:020. Eligibility and credentialing procedure. Stephen Curley, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 022:070. Requirements for foreign-educated physical therapists and physical therapist assistants.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 022:170. Physical Therapy Compact Commission.

Board of Licensure and Certification for Dietitians and Nutritionists

201 KAR 033:015. Application; approved programs. Lora Parks, chair, and August Pozgay, counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Alcohol and Drug Counselors

201 KAR 035:070. Supervision experience. Tim Cesario, chair, and Kevin Winstead, commissioner, represented the board.

In response to questions by Senator Yates, Mr. Cesario stated that there were two (2) categories of supervisors of entry-level counselors, CADC or LADC. Uncredentialed counselors received at least two (2) hours of supervision, consisting of case review, twice per month and direct supervision every six (6) months. Clinical supervisors were responsible for the supervisee's practice.

In response to questions by Co-Chair West, Mr. Cesario stated that, previously, an entry-level clinician was required to have at least a baccalaureate degree, in any degree subject. Senate Bill 191 from the 2020 Regular Session of the General Assembly authorized certain credentialing for those with at least a high school degree and under supervision; therefore, these supervisory provisions had added importance.

A motion was made and seconded to approve the following amendments: to amend: (1) the RELATES TO paragraph and Sections 1, 4, 11, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) Section 14 to update incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

Board of Medical Imaging and Radiation Therapy

201 KAR 046:060. Continuing education requirements. Elizabeth Morgan, executive director, represented the board.

In response to a question by Co-Chair West, Ms. Morgan stated that this administrative regulation clarified that the process of developing continuing education materials shall not constitute continuing education itself.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, and CONFORMITY paragraph and Sections 2, 3, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

301 KAR 004:010. Districts. Jenny Gilbert, Office of the Commissioner; Steven Fields, staff attorney; and Rich Storm, commissioner, 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 and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 004:020. Ballard Wildlife Management Area restrictions.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to delete restrictions on firearms and dogs. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 004:100. Peabody Wildlife Management Area use requirements and restrictions.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 004:110. Administration of drugs to wildlife.

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 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: School Administration and Finance

702 KAR 003:090. Depository of board, collateral. Todd Allen, general counsel, and Matthew Courtney, policy advisor, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Education: Office of Learning Support Services

704 KAR 007:170. Corporal punishment.

In response to questions by Co-Chair West, Mr. Courtney stated that the 2019 School Safety and Resiliency Act required school districts to create provisions for trauma-informed disciplinary strategies. Corporal punishment was statutorily authorized, and this administrative regulation established safety guidelines for its use, including a standard definition for "corporal punishment" and exemptions from corporal punishment for certain students, including students in foster care, homeless students, and students with an Individualized Education Program (IEP). Children in foster care were already excluded from corporal punishment in other settings, and this administrative regulation carried that forward into educational settings for consistency. Parental notification and involvement were required for use of corporal punishment. Within the first five (5) days of enrollment, parents must opt-in, rather than opting-out, for corporal punishment even to be considered for a student. Parental consent must also be specifically authorized verbally on the day that corporal punishment is administered. A trauma-informed disciplinary technique must be attempted first, with corporal punishment being an alternative technique. The 2019 School Safety and Resiliency Act was silent regarding corporal punishment. Numerous studies demonstrated that corporal punishment was ineffective long term and could create trauma. This administrative regulation increased parental involvement in disciplinary strategies. Most districts in Kentucky disallowed corporal punishment. Fifteen (15) districts explicitly allowed corporal punishment or were silent on the issue. Of the fifteen (15) districts, only four (4) explicitly authorized corporal punishment. The other eleven (11) were silent on the matter. Corporal punishment alternatives were determined based on the trauma-informed tool kit available on the agency's Web site and included various disciplinary resolution practices.

In response to questions by Senator Yates, Mr. Courtney stated that districts that allowed corporal punishment were required to establish policies that established limits on corporal punishment and established the instrument to be used to administer the punishment. The policy development required community input. This established community transparency and parental permission in order to mitigate liability. This administrative regulation also required data collection.

In response to a question by Representative Marzian, Mr. Courtney stated that parents, within the first five (5) days of enrollment, must opt-in and be notified for permission the day that corporal punishment is administered. A parent could withdraw permission for corporal punishment at any time.

In response to a question by Co-Chair Hale, Mr. Courtney stated that corporal punishment must be administered by a principal or vice principal only. The corporal punishment must be in

the presence of a witness; however, a specific witness cannot be compelled to be a witness in order to prevent vicarious trauma.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Alternative Education Programs

704 KAR 019:002. Alternative education programs.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Personnel System for Certified and Equivalent Employees

780 KAR 003:020. Compensation plan.

LABOR CABINET: Department of Workplace Standards: Labor Standards; Wages and Hours

803 KAR 001:026. Equal pay provisions, meaning and application. John Ghaelian, general counsel, and Duane Hammons, assistant director, represented the department. Frankie Huffman, board member, Persons with Developmental Disabilities (PADD) Board, and Kevin Sharkey, staff attorney, Kentucky Protection and Advocacy, appeared in opposition to 803 KAR 1:091.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 001:061. Overtime pay requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 5, and 8 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.

803 KAR 001:064. Trading time.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 001:067. Hours worked.

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 and 4 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 001:068. Recordkeeping requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 001:071. Executive, administrative, supervisory or professional employees; salesmen.

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, 2, and 4 through 15 to comply with the drafting and formatting

requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 001:076. Exclusions from minimum wage and overtime.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 001:081. Board, lodging, gratuities and other allowances.

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 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 001:091. Workers with Disabilities and Work Activities Centers' employee's wages.

In response to a question by Co-Chair Hale, Mr. Ghaelian stated that KRS 337.010 established an exemption from minimum wage requirements for sheltered workshops.

In response to a question by Co-Chair Hale, Mr. Sharkey stated that the PADD Board and Kentucky Protection and Advocacy requested that the cabinet repeal the existing administrative regulation regarding sheltered workshops and withdraw this newly filed version in order to phase out this program, as was done in Alaska. Sheltered workshops and subminimum wages were in conflict with the Americans with Disabilities Act. The federal government and several states were phasing out these programs, which included 14C certificates. Kentucky has also established supported Competitive Integrated Employment in communities, which should be the primary objective for disabled persons seeking employment. In the agency's Statement of Consideration for this administrative regulation, the cabinet stated that the agency was required to promulgate this administrative regulation; however, the authorizing statute established discretion to do so, not a mandate.

In response to a question by Co-Chair Hale, Mr. Huffman stated that he had a negative experience working in a sheltered workshop. He was supposed to receive ten (10) dollars per week; however, his pay was docked each time he dropped something. As a result, he once received only two (2) dollars as pay. The sheltered workshop program initially began after World War II as a way for veterans to regain strength and return to community employment. That program morphed into today's subminimum wage workplace for disabled persons. Some workers had been in the program for twenty (20) years.

In response to a question by Co-Chair Hale, Mr. Sharkey stated that Kentucky Protection and Advocacy requested that the agency repeal the existing administrative regulation and withdraw this administrative regulation, in order that the subminimum wage program for sheltered workshops be phased out. Senator Alvarado stated that he sponsored bills over the years to phase out the subminimum wage program for sheltered workshops. Some 14C certificate holders had taken advantage of disabled employees. Those who liked working in sheltered workshops would not be forced out because existing sheltered workshops could be grandfathered in. The goal was to mainstream sheltered workshop employees into community employment. There were concerns about adequate employment availability without the sheltered workshops. Mr. Sharkey stated that the authorizing statute was permissive, not mandatory. He requested that this administrative regulation be deferred.

In response to a question by Representative Bridges, Mr. Sharkey stated that he did not have specific employment data regarding states that had ended these programs; however, there was no indication of a detriment to employment in those states. Senator Yates stated that sheltered workshops could provide an

opportunity for disabled people to gain employment skills. Sometimes the cost to these employers was higher than their revenue. There were also concerns about issues such as what had happened in Mr. Huffman's case. It might be beneficial to investigate federal funding and rebates that might improve this situation. There needed to be a balance between the compassionate, dignity of work and incentives for businesses.

In response to a question by Co-Chair West, Mr. Sharkey stated that this administrative regulation would allow new 14C certificates to be issued. Kentucky Protection and Advocacy believed that the agency had the authority to phase out this program by not having this administrative regulation.

In response to a question by Co-Chair Hale, Mr. Ghaelian stated that, after reviewing multiple statutes, the agency determined that it was required to promulgate this administrative regulation.

In response to a question by Co-Chair West and Representative Frazier – Gordon, Mr. Ghaelian stated that this administrative regulation would authorize new 14C certificates to be issued. Senator Alvarado stated that the goal was to mainstream sheltered workshop employees and grandfather in those who wished to remain working for sheltered workshops. He stated that it was his intention to keep sponsoring legislation to this end, but deferral of this administrative regulation did not seem to be an action that would assist the end goal. Co-Chair Hale stated that this subcommittee was limited, and there did not seem to be a consensus regarding deferral.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to add Section 3 to incorporate material by reference. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Behavioral Health, Developmental and Intellectual Disabilities: Division of Program Integrity: Institutional Care

908 KAR 003:010E. Patient's rights. Rachael Ratliff, regulation coordinator, represented the division.

Department for Community Based Services: Child Welfare

922 KAR 001:470. Central registry. Laura Begin, regulation coordinator, and Andrea Day, assistant division director, represented the department.

A motion was made and seconded to approve the following amendment: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

Day Care

922 KAR 002:280. Background checks for child care staff members, reporting requirements, and appeals.

A motion was made and seconded to approve the following amendments: to amend Sections 5, 6, and 9 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 May 10, 2022, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:430. Emergency orders and hearings.

Board of Dentistry

201 KAR 008:600. Mobile dental facilities and portable dental units.

Applied Behavior Analysis Licensing Board

201 KAR 043:010. Application procedures for licensure.

201 KAR 043:020. Application procedures for temporary licensure.

201 KAR 043:030. Fees.

201 KAR 043:040. Code of ethical standards and standards of practice.

201 KAR 043:050. Requirement for supervision.

201 KAR 043:060. Complaint and disciplinary process.

201 KAR 043:071. Repeal of 201 KAR 043:070.

201 KAR 043:080. Renewals.

201 KAR 043:090. Voluntary inactive and retired status.

201 KAR 043:100. Telehealth and telepractice.

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

301 KAR 004:001. Selection of Fish and Wildlife Resources Commission nominees.

JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: Driver Training

502 KAR 010:010. Definitions.

502 KAR 010:020. Department facilities; facility inspection; conflict of interest.

502 KAR 010:030. Instructor's license.

502 KAR 010:035. Commercial driver's license skill testing.

502 KAR 010:040. Training school facilities.

502 KAR 010:050. Contracts and agreements.

502 KAR 010:060. School advertising.

502 KAR 010:070. Training vehicle, annual inspection.

502 KAR 010:080. License suspension, revocation, denial.

502 KAR 010:090. Procedure for denial, suspension, nonrenewal or revocation hearings.

502 KAR 010:110. Third-party CDL skills test examiner standards.

502 KAR 010:120. Hazardous materials endorsement requirements.

Concealed Deadly Weapons

502 KAR 011:010. Application for license to carry concealed deadly weapon.

502 KAR 011:060. License denial and reconsideration process.

502 KAR 011:070. License revocation and suspension notice and reinstatement process.

Law Enforcement Officers Safety Act of 2004

502 KAR 013:010. Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 013:030. Range qualification for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

VOLUME 48, NUMBER 12– JUNE 1, 2022

502 KAR 013:040. Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 013:050. Replacement of licenses to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 013:060. Change of personal information regarding certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

502 KAR 013:080. Incomplete application for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers.

Criminal History Record Information System

502 KAR 030:010. Criminal History Record Information System.

502 KAR 030:020. Arrest and disposition reporting procedure.

502 KAR 030:030. Audit of Criminal History Record Information System.

502 KAR 030:050. Security of centralized criminal history record information.

502 KAR 030:060. Dissemination of criminal history record information.

502 KAR 030:070. Inspection of criminal history record information by record subject.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office of Vocational Rehabilitation

781 KAR 001:010. Office of Vocational Rehabilitation appeal procedures.

781 KAR 001:020. General provisions for operation of the Office of Vocational Rehabilitation.

781 KAR 001:030. Order of selection and economic need test for vocational rehabilitation services.

781 KAR 001:040. Rehabilitation technology services.

781 KAR 001:050. Carl D. Perkins Vocational Training Center.

Office for the Blind

782 KAR 001:010. Kentucky Business Enterprises.

782 KAR 001:070. Certified driver training program.

Kentucky Commission on Proprietary Education

791 KAR 001:010. Applications, permits, and renewals.

791 KAR 001:020. Standards for licensure.

791 KAR 001:025. Fees.

791 KAR 001:027. School record keeping requirements.

791 KAR 001:030. Procedures for hearings.

791 KAR 001:035. Student protection fund.

791 KAR 001:040. Commercial driver license training school curriculum and refresher course.

791 KAR 001:050. Application for license for commercial driver license training school.

791 KAR 001:060. Application for renewal of license for commercial driver license training school.

791 KAR 001:070. Commercial driver license training school instructor and agency application and renewal procedures.

791 KAR 001:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver license training schools.

791 KAR 001:100. Standards for Kentucky resident commercial driver training school facilities.

791 KAR 001:150. Bond requirements for agents and schools.

791 KAR 001:155. School closing process.

791 KAR 001:160. 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 001:005. Employer-employee relationship.

803 KAR 001:025. Equal pay provisions, meaning and application.

803 KAR 001:060. Overtime pay requirements.

803 KAR 001:063. Trading time.

803 KAR 001:065. Hours worked.

803 KAR 001:066. Recordkeeping requirements.

803 KAR 001:070. Executive, administrative, supervisory or professional employees; salesmen.

803 KAR 001:075. Exclusions from minimum wage and overtime.

803 KAR 001:080. Board, lodging, gratuities and other allowances.

803 KAR 001:090. Workers with disabilities and work activity centers' employee's wages.

Occupational Safety and Health

803 KAR 002:402. General safety and health provisions.

803 KAR 002:411. Scaffolds.

803 KAR 002:419. Demolition.

803 KAR 002:445. Confined spaces in construction.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 017:350. Life insurance and managed care.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: State Health Plan

900 KAR 005:020E. State Health Plan for facilities and services.

900 KAR 005:020. State Health Plan for facilities and services.

Certificate of Need

900 KAR 006:075E. Certificate of need nonsubstantive review.

900 KAR 006:075. Certificate of Need nonsubstantive review.

Essential Personal Care Visitor Program

900 KAR 014:010E. Essential personal care visitor programs; visitation guidelines.

Department for Community Based Services: Health Services and Facilities

902 KAR 020:016. Hospitals; operations and services.

902 KAR 020:018. Operation and services; end-stage renal disease facilities.

902 KAR 020:106. Operation and services; ambulatory surgical center.

Office of Inspector General

906 KAR 001:110. Critical access hospital services.

Department for Medicaid Services: Outpatient Pharmacy Program

907 KAR 023:020. Reimbursement for outpatient drugs.

Child Welfare

922 KAR 001:360. Private child care placement, levels of care, and payment.

922 KAR 001:530. Post-adoption placement stabilization services.

Adult Services

922 KAR 005:070. Adult protective services.

The subcommittee adjourned at 3 p.m. The next meeting of this subcommittee was tentatively scheduled for June 14, 2022, 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.

**HOUSE STANDING COMMITTEE ON TRANSPORTATION
Meeting of March 8, 2022**

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 2/16/2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The House Transportation Committee met on March 8, 2022 and a quorum present. The following administrative regulations were available for consideration having been referred to the Committee on February 7, 2022, pursuant to KRS 13A.290(6):

603 KAR 005:150

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:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 8, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**SENATE STANDING COMMITTEE ON TRANSPORTATION
Meeting of March 9, 2022**

The Senate Transportation met on March 9, 2022 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on February 7, 2022, pursuant to KRS 13A.290(6):

603 KAR 005:150

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:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 9, 2022 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 48th year of the *Administrative Register of Kentucky*, from July 2021 through June 2022.

Locator Index - Effective Dates

L - 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

L - 20

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

L - 41

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this Register year.

Technical Amendment Index

L - 43

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

L - 44

A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
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 <i>Register</i> 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 <i>Register</i> 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.				

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 .					

016 KAR 002:220E	48 Ky.R. 253	6-25-2021	200 KAR 017:110E	48 Ky.R. 5	6-2-2021
Replaced	1492	2-1-2022	As Amended	1098	9-14-2021
016 KAR 002:230E	48 Ky.R. 255	6-25-2021	201 KAR 002:106E	48 Ky.R. 1997	12-14-2021
Replaced	705	2-1-2022	201 KAR 002:410E	47 Ky.R. 1343	11-23-2020
030 KAR 005:011E	48 Ky.R. 1703	10-29-2021	As Amended	1871	2-22-2021
030 KAR 005:021E	48 Ky.R. 1704	10-29-2021	Withdrawn		8-10-2021
030 KAR 005:031E	48 Ky.R. 1706	10-29-2021	201 KAR 002:411E	48 Ky.R. 734	8-10-2021
030 KAR 005:041E	48 Ky.R. 1708	10-29-2021	Withdrawn		10-11-2021
030 KAR 005:051E	48 Ky.R. 1710	10-29-2021	201 KAR 002:412E	48 Ky.R. 1466	10-11-2021
030 KAR 005:060E	48 Ky.R. 1711	10-29-2021	201 KAR 012:082E	48 Ky.R. 1468	10-1-2021
030 KAR 006:011E	48 Ky.R. 1093	9-15-2021	Am Comments	2009	12-14-2021
Replaced	2022	4-5-2022	As Amended	2184	1-10-2022
031 KAR 003:031E	48 Ky.R. 2902	4-28-2022	Replaced	2196	5-3-2022
031 KAR 004:071E	48 Ky.R. 2904	4-28-2022	201 KAR 015:030E	48 Ky.R. 268	6-30-2021
031 KAR 004:131E	48 Ky.R. 2906	4-28-2022	Withdrawn		4-7-2022
031 KAR 004:141E	48 Ky.R. 2909	4-28-2022	Resubmitted	2689	4-7-2022
031 KAR 004:195E	48 Ky.R. 256	6-23-2021	201 KAR 015:040E	48 Ky.R. 270	6-30-2021
031 KAR 004:196E	48 Ky.R. 2911	4-28-2022	Withdrawn		4-7-2022
031 KAR 004:200E	48 Ky.R. 258	6-23-2021	Resubmitted	2692	4-7-2022
031 KAR 004:201E	48 Ky.R. 2913	4-28-2022	201 KAR 015:050E	48 Ky.R. 272	6-30-2021
031 KAR 004:210E	48 Ky.R. 2914	4-28-2022	Withdrawn		4-7-2022
031 KAR 005:011E	48 Ky.R. 2916	4-28-2022	Resubmitted	2693	4-7-2022
031 KAR 005:025E	48 Ky.R. 259	6-23-2021	201 KAR 015:110E	48 Ky.R. 276	6-30-2021
031 KAR 005:026	48 Ky.R. 2918	4-28-2022	Withdrawn		4-7-2022
040 KAR 001:040E	48 Ky.R. 262	6-28-2021	Resubmitted	2697	4-7-2022
Replaced	1506	2-1-2022	201 KAR 015:125E	48 Ky.R. 279	6-30-2021
101 KAR 002:095E	47 Ky.R. 172	1-29-2021	Withdrawn		4-7-2022
As Amended	2534	5-11-2021	Resubmitted	2700	4-7-2022
Replaced	2573	8-31-2021	201 KAR 020:070E	48 Ky.R. 2702	4-6-2022
Resubmitted	48 Ky.R. 2684	4-15-2022	201 KAR 020:260E	48 Ky.R. 2168	1-11-2022
101 KAR 002:210E	48 Ky.R. 1095	9-15-2021	Amended	2948	
Replaced	1233	4-5-2022	201 KAR 020:480E	48 Ky.R. 2367	2-2-2022
101 KAR 006:020E	48 Ky.R. 2687	4-15-2022	Amended	2951	
102 KAR 001:360E	48 Ky.R. 2167	12-28-2021	201 KAR 035:010E	47 Ky.R. 1872	3-5-2021
105 KAR 001:450E	48 Ky.R. 2921	5-5-2022	Am Comments	2536	5-13-2021
200 KAR 002:006E	47 Ky.R. 1730	1-29-2021	As Amended	48 Ky.R. 15	6-8-2021
Replaced	1811	8-31-2021	Replaced	334	8-26-2021
200 KAR 003:020E	48 Ky.R. 263	7-1-2021	201 KAR 035:020E	47 Ky.R. 1874	3-5-2021
Impacted by 2021 legislation			Am Comments	2538	5-13-2021
200 KAR 008:505E	47 Ky.R. 1735	1-27-2021	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
			201 KAR 046:020E	48 Ky.R. 2172	12-21-2021
			202 KAR 007:545E	48 Ky.R. 2704	3-30-2022

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	48 Ky.R. 2783		016 KAR 009:090		
011 KAR 016:001			Amended	47 Ky.R. 2619	
Amended	48 Ky.R. 1203	4-5-2022	As Amended	48 Ky.R. 766	11-30-2021
011 KAR 016:010			030 KAR 001:011	48 Ky.R. 1431	
Amended	48 Ky.R. 1205	4-5-2022	Withdrawn		11-15-2021
011 KAR 016:020			030 KAR 002:010		
Amended	48 Ky.R. 2788		Amended	48 Ky.R. 2111	
011 KAR 022:010	48 Ky.R. 2875		As Amended	2558	
011 KAR 023:010	48 Ky.R. 2877		030 KAR 003:010		
013 KAR 001:020			Amended	48 Ky.R. 1215	
Amended	47 Ky.R. 1797		As Amended	2021	4-5-2022
As Amended	2565	8-31-2021	030 KAR 003:020		
013 KAR 003:010			Amended	48 Ky.R. 1217	
Amended	48 Ky.R. 842		As Amended	2022	4-5-2022
As Amended	2015	4-5-2022	030 KAR 003:030		
013 KAR 003:020			Amended	48 Ky.R. 1218	4-5-2022
Amended	48 Ky.R. 843		030 KAR 005:011	48 Ky.R. 1964	
As Amended	2015	4-5-2022	As Amended	2376	
013 KAR 003:030			030 KAR 005:021	48 Ky.R. 1965	
Amended	48 Ky.R. 844		As Amended	2376	
As Amended	2016	4-5-2022	030 KAR 005:031	48 Ky.R. 1967	
013 KAR 003:040			As Amended	2377	
Amended	48 Ky.R. 846		030 KAR 005:041	48 Ky.R. 1968	
As Amended	2016	4-5-2022	As Amended	2378	
013 KAR 003:050			030 KAR 005:051	48 Ky.R. 1970	
Amended	48 Ky.R. 847		As Amended	2378	
As Amended	2017	4-5-2022	030 KAR 005:060	48 Ky.R. 1822	
013 KAR 003:060			As Amended	2379	
Amended	48 Ky.R. 849		030 KAR 006:011	48 Ky.R. 1432	
As Amended	2017	4-5-2022	As Amended	2022	4-5-2022
013 KAR 004:010			031 KAR 003:010		
Amended	47 Ky.R. 1805		Amended	47 Ky.R. 2621	
As Amended	2572	8-31-2021	As Amended	2024	
016 KAR 001:030			031 KAR 003:031	48 Ky.R. 3108	
Amended	48 Ky.R. 1624		031 KAR 004:071	48 Ky.R. 3109	
As Amended	2188	5-3-2022	031 KAR 004:131	48 Ky.R. 3111	
016 KAR 002:040			031 KAR 004:141	48 Ky.R. 2917	
Amended	48 Ky.R. 1207	4-5-2022	031 KAR 004:170		
016 KAR 002:050			Amended	48 Ky.R. 3026	
Amended	48 Ky.R. 1210		031 KAR 004:195	48 Ky.R. 707	
As Amended	2018	4-5-2022	Withdrawn	*	11-15-2021
016 KAR 002:180			031 KAR 004:196	48 Ky.R. 3116	
Amended	48 Ky.R. 444		031 KAR 004:200	48 Ky.R. 708	
As Amended	1492	2-1-2022	Withdrawn	*	11-15-2021
016 KAR 002:220	48 Ky.R. 704		031 KAR 004:201	48 Ky.R. 3118	
As Amended	1492	2-1-2022	031 KAR 004:210	48 Ky.R. 3119	
016 KAR 002:230	48 Ky.R. 705	2-1-2022	031 KAR 005:011	48 Ky.R. 3121	
016 KAR 003:060			031 KAR 005:025	48 Ky.R. 709	
Amended	47 Ky.R. 2614		Withdrawn	*	11-15-2021
As Amended	48 Ky.R. 763	11-30-2021	031 KAR 005:026	48 Ky.R. 3123	
016 KAR 003:070			040 KAR 001:040	48 Ky.R. 712	
Amended	48 Ky.R. 445		As Amended	1506	2-1-2022
As Amended	1493	2-1-2022	040 KAR 003:020		
016 KAR 003:080			Amended	48 Ky.R. 850	
Amended	48 Ky.R. 2614		Withdrawn		4-25-2022
016 KAR 004:020			Expired		4-25-2022
Amended	48 Ky.R. 1213		040 KAR 006:010		
As Amended	2019	4-5-2022	Amended	48 Ky.R. 852	
016 KAR 004:050			As Amended	1722	3-1-2022
Amended	48 Ky.R. 447		040 KAR 006:020		
As Amended	1494	2-1-2022	Amended	48 Ky.R. 856	
016 KAR 005:010			As Amended	1724	3-1-2022
Amended	48 Ky.R. 449		040 KAR 006:030	48 Ky.R. 1062	
As Amended	1494	2-1-2022	As Amended	1726	3-1-2022
016 KAR 005:020			101 KAR 001:325		
Amended	47 Ky.R. 2616		Amended	48 Ky.R. 1825	
As Amended	48 Ky.R. 764	11-30-2021	101 KAR 001:335		
016 KAR 006:010			Amended	48 Ky.R. 1220	
Amended	48 Ky.R. 462		As Amended	2190	5-3-2022
Am Comments	1581	3-1-2022	101 KAR 001:345		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	48 Ky.R. 1223		103 KAR 030:120		
As Amended	2191	5-3-2022	Amended	48 Ky.R. 501	
101 KAR 001:365			As Amended	1514	2-1-2022
Amended	48 Ky.R. 1224	5-3-2022	103 KAR 030:140		
As Amended	2192		Amended	48 Ky.R. 504	2-1-2022
101 KAR 001:367			103 KAR 030:190		
Amended	48 Ky.R. 1226		Amended	48 Ky.R. 506	
As Amended	2193	5-3-2022	As Amended	1515	2-1-2022
101 KAR 001:375			103 KAR 030:250		
Amended	48 Ky.R. 1229		Amended	48 Ky.R. 509	
As Amended	2194	5-3-2022	As Amended	1517	2-1-2022
101 KAR 001:395			105 KAR 001:210		
Amended	48 Ky.R. 1230		Amended	48 Ky.R. 858	
As Amended	2195	5-3-2022	As Amended	2381	
101 KAR 001:400			105 KAR 001:270		
Amended	48 Ky.R. 1232		Amended	47 Ky.R. 2623	
As Amended	2196	5-3-2022	As Amended	48 Ky.R. 767	11-30-2021
101 KAR 002:046			105 KAR 001:310		
Amended	48 Ky.R. 2790		Amended	48 Ky.R. 866	
101 KAR 002:066			As Amended	2387	
Amended	48 Ky.R. 2792		105 KAR 001:330		
101 KAR 002:095			Amended	48 Ky.R. 873	
Amended	47 Ky.R. 1807		As Amended	2393	
As Amended	2573	8-31-2021	105 KAR 001:390		
Amended	48 Ky.R. 2795		Amended	48 Ky.R. 2811	
101 KAR 002:102			105 KAR 001:450	48 Ky.R. 3125	
Amended	48 Ky.R. 2797		200 KAR 002:006		
101 KAR 002:190			Amended	47 Ky.R. 1811	8-31-2021
Amended	48 Ky.R. 2802		200 KAR 003:020		
101 KAR 002:210			Amended	48 Ky.R. 510	
Amended	48 Ky.R. 1233	4-5-2022	As Amended	1517	2-1-2022
101 KAR 003:015			200 KAR 017:100	48 Ky.R. 215	
Amended	48 Ky.R. 2805		Withdrawn	*	5-14-2021
101 KAR 006:020	48 Ky.R. 2878		201 KAR 001:100		
103 KAR 001:160	47 Ky.R. 1710		Amended	47 Ky.R. 1816	
As Amended	2356	8-3-2021	As Amended	2575	
103 KAR 008:090			201 KAR 001:190		
Amended	48 Ky.R. 465		Amended	48 Ky.R. 2112	
Am Comments	1584	3-1-2022	As Amended	2558	
103 KAR 016:270			201 KAR 002:015		
Amended	48 Ky.R. 466		Amended	48 Ky.R. 2815	
Am Comments	1585	3-1-2022	201 KAR 002:020		
103 KAR 016:320			Amended	48 Ky.R. 2817	
Amended	48 Ky.R. 484		201 KAR 002:030		
As Amended	1506	2-1-2022	Amended	48 Ky.R. 1235	
103 KAR 016:352			As Amended	2025	1-13-2022
Amended	48 Ky.R. 486		201 KAR 002:040		
As Amended	1507	2-1-2022	Amended	47 Ky.R. 2029	
103 KAR 018:020			As Amended	48 Ky.R. 22	7-21-2021
Amended	48 Ky.R. 488		201 KAR 002:050		
As Amended	1508	2-1-2022	Amended	48 Ky.R. 877	12-15-2021
103 KAR 018:090			Amended	48 Ky.R. 2819	
Amended	48 Ky.R. 490		201 KAR 002:061		
As Amended	1509	2-1-2022	Amended	47 Ky.R. 2421	
103 KAR 026:100			As Amended	48 Ky.R. 310	8-26-2021
Amended	47 Ky.R. 1610		201 KAR 002:074		
As Amended	2357	8-3-2021	Amended	48 Ky.R. 1237	
103 KAR 026:131	47 Ky.R. 1857		As Amended	2026	1-13-2022
As Amended	48 Ky.R. 20	10-5-2021	201 KAR 002:076		
103 KAR 027:050			Amended	48 Ky.R. 879	
Amended	48 Ky.R. 491		As Amended	1726	12-15-2021
As Amended	1509	2-1-2022	201 KAR 002:106		
103 KAR 027:150			Amended	48 Ky.R. 2116	
Amended	48 Ky.R. 492		201 KAR 002:171	47 Ky.R. 2179	
As Amended	1510	2-1-2022	As Amended	48 Ky.R. 23	7-21-2021
103 KAR 027:230			201 KAR 002:205		
Amended	48 Ky.R. 495	2-1-2022	Amended	47 Ky.R. 2031	
103 KAR 030:091			As Amended	48 Ky.R. 23	7-21-2021
Amended	48 Ky.R. 497		201 KAR 002:225		
As Amended	1511	2-1-2022	Amended	48 Ky.R. 2820	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
201 KAR 002:270			As Amended	2565	
Amended	48 Ky.R. 100		201 KAR 014:125		
As Amended	1112	10-20-2021	Amended	48 Ky.R. 1844	
201 KAR 002:360			As Amended	2566	
Amended	48 Ky.R. 101		201 KAR 014:150		
As Amended	1112	10-20-2021	Amended	48 Ky.R. 1846	
201 KAR 002:380			As Amended	2567	
Amended	47 Ky.R. 1422		201 KAR 014:180		
Am Comments	2404		Amended	48 Ky.R. 1848	
As Amended	2577	6-16-2021	As Amended	2567	
201 KAR 002:390			201 KAR 015:030		
Amended	47 Ky.R. 2032		Amended	48 Ky.R. 517	
As Amended	48 Ky.R. 24	7-21-2021	Withdrawn		4-7-2022
201 KAR 002:420	48 Ky.R. 217		Amended	48 Ky.R. 2836	
As Amended	1113	10-20-2021	201 KAR 015:040		
201 KAR 002:430	48 Ky.R. 1063		Amended	48 Ky.R. 519	
Am Comments	2239		Withdrawn		4-7-2022
201 KAR 002:440	48 Ky.R. 2131		Amended	48 Ky.R. 2838	
Am Comments	2758		201 KAR 015:050		
As Amended	2956		Amended	48 Ky.R. 521	
201 KAR 006:020			Withdrawn		4-7-2022
Amended	48 Ky.R. 515		Amended	48 Ky.R. 2839	
As Amended	1727	12-15-2021	201 KAR 015:110		
201 KAR 006:040			Amended	48 Ky.R. 524	
Amended	48 Ky.R. 1828		Withdrawn		4-7-2022
As Amended	2720		Amended	48 Ky.R. 2843	
201 KAR 006:060			201 KAR 015:125		
Amended	48 Ky.R. 3029		Amended	48 Ky.R. 527	
201 KAR 008:520			Withdrawn		4-7-2022
Amended	48 Ky.R. 103		Amended	48 Ky.R. 2846	
Am Comments	1603		201 KAR 017:110		
As Amended	1728	12-15-2021	Amended	48 Ky.R. 2498	
Amended	48 Ky.R. 2822		As Amended	2958	
201 KAR 008:550			201 KAR 019:035		
Amended	48 Ky.R. 2824		Amended	48 Ky.R. 3031	
201 KAR 008:600	48 Ky.R. 2531		201 KAR 019:087		
201 KAR 009:270			Amended	48 Ky.R. 3033	
Amended	47 Ky.R. 2424		201 KAR 020:057		
Am Comments	48 Ky.R. 833		Amended	48 Ky.R. 529	
As Amended	1113	10-20-2021	As Amended	1521	11-23-2021
201 KAR 009:290	47 Ky.R. 2495		201 KAR 020:065		
As Amended	48 Ky.R. 770	10-20-2021	Amended	47 Ky.R. 1819	
201 KAR 011:121			As Amended	2578	6-16-2021
Amended	48 Ky.R. 2830		201 KAR 020:070		
201 KAR 012:082			Amended	48 Ky.R. 2847	
Amended	48 Ky.R. 1627		201 KAR 020:085		
As Amended	2196	5-3-2022	Amended	48 Ky.R. 2615	
201 KAR 014:015			201 KAR 020:110		
Amended	48 Ky.R. 1830		Amended	48 Ky.R. 2616	
201 KAR 014:030			201 KAR 020:215		
Amended	48 Ky.R. 1831		Amended	48 Ky.R. 533	
201 KAR 014:040			As Amended	2029	1-13-2022
Amended	48 Ky.R. 1833		201 KAR 020:220		
As Amended	2561		Amended	48 Ky.R. 1849	
201 KAR 014:050			As Amended	2721	
Amended	48 Ky.R. 1834		201 KAR 020:240		
As Amended	2561		Amended	48 Ky.R. 2849	
201 KAR 014:065			201 KAR 020:280		
Amended	48 Ky.R. 1835		Amended	48 Ky.R. 1841	
201 KAR 014:085			As Amended	2723	
Amended	48 Ky.R. 1837		201 KAR 020:320		
As Amended	2562		Amended	48 Ky.R. 537	
201 KAR 014:105			Am Comments	1773	
Amended	48 Ky.R. 1839		As Amended	2031	1-13-2022
As Amended	2564		201 KAR 020:360		
201 KAR 014:110			Amended	48 Ky.R. 1855	
Amended	48 Ky.R. 1841		As Amended	2724	
As Amended	2564		201 KAR 020:370		
201 KAR 014:115			Amended	47 Ky.R. 1823	
Amended	48 Ky.R. 1843		As Amended	2581	6-16-2021

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	48 Ky.R. 2618		Amended	47 Ky.R. 2041	8-26-2021
201 KAR 020:411			Amended	48 Ky.R. 1861	
Amended	47 Ky.R. 1824		As Amended	2568	
As Amended	2582	6-16-2021	201 KAR 026:130		
201 KAR 020:471	48 Ky.R. 218	3-10-2022	Amended	47 Ky.R. 2042	
201 KAR 020:472	48 Ky.R. 220		As Amended	48 Ky.R. 313	8-26-2021
Am Comments	1605		Amended	48 Ky.R. 1863	
As Amended	2397	3-10-2022	As Amended	2569	
201 KAR 020:474	48 Ky.R. 224		201 KAR 026:155		
As Amended	2400	3-10-2022	Amended	47 Ky.R. 2046	
201 KAR 020:476	48 Ky.R. 227		As Amended	48 Ky.R. 316	8-26-2021
As Amended	2401	3-10-2022	Amended	48 Ky.R. 1866	
201 KAR 020:478	48 Ky.R. 230		As Amended	2571	
As Amended	2403	3-10-2022	201 KAR 026:160		
201 KAR 020:480			Amended	48 Ky.R. 1868	
Amended	48 Ky.R. 1858		As Amended	2572	
Withdrawn		1-31-2022	201 KAR 026:171		
Amended	48 Ky.R. 2500		Amended	47 Ky.R. 2048	
As Amended	2959		As Amended	48 Ky.R. 317	8-26-2021
201 KAR 020:506			201 KAR 026:175		
Amended	47 Ky.R. 2036	7-21-2021	Amended	48 Ky.R. 1870	
201 KAR 020:660			201 KAR 026:180		
Amended	47 Ky.R. 1827		Amended	47 Ky.R. 2052	
As Amended	2584	6-16-2021	As Amended	48 Ky.R. 320	8-26-2021
201 KAR 021:035			Amended	48 Ky.R. 1873	
Amended	48 Ky.R. 105		201 KAR 026:185		
As Amended	1525	11-23-2021	Amended	47 Ky.R. 2054	
201 KAR 021:054			As Amended	48 Ky.R. 320	8-26-2021
Amended	48 Ky.R. 106		201 KAR 026:190		
As Amended	1525	11-23-2021	Amended	47 Ky.R. 2056	
201 KAR 021:070			As Amended	48 Ky.R. 321	8-26-2021
Amended	48 Ky.R. 108	11-23-2021	Amended	48 Ky.R. 1875	
201 KAR 021:090			As Amended	2573	
Amended	48 Ky.R. 109	11-23-2021	201 KAR 026:200		
201 KAR 021:100			Amended	47 Ky.R. 2058	
Amended	48 Ky.R. 110	11-23-2021	As Amended	48 Ky.R. 323	8-26-2021
201 KAR 022:001			201 KAR 026:215		
Amended	48 Ky.R. 2266		Amended	48 Ky.R. 1878	
As Amended	2726		201 KAR 026:225		
201 KAR 022:020			Amended	48 Ky.R. 1880	
Amended	48 Ky.R. 2501		201 KAR 026:230		
As Amended	2960		Amended	47 Ky.R. 2060	
201 KAR 022:045			As Amended	48 Ky.R. 324	8-26-2021
Amended	48 Ky.R. 541		Amended	48 Ky.R. 1882	
As Amended	1525	11-23-2021	As Amended	2574	
201 KAR 022:053			201 KAR 026:250		
Amended	48 Ky.R. 2267		Amended	47 Ky.R. 2063	
As Amended	2727		As Amended	48 Ky.R. 326	8-26-2021
201 KAR 022:070			Amended	48 Ky.R. 1884	
Amended	48 Ky.R. 2503		201 KAR 026:270		
201 KAR 022:170			Amended	48 Ky.R. 1886	
Amended	47 Ky.R. 1424	6-16-2021	As Amended	2576	
Amended	48 Ky.R. 2505		201 KAR 026:280		
As Amended	2961		Amended	47 Ky.R. 2065	
201 KAR 023:070			As Amended	48 Ky.R. 327	8-26-2021
Amended	47 Ky.R. 1247		201 KAR 026:290		
Am Comments	1744		Amended	47 Ky.R. 2067	
As Amended	1933	6-16-2021	As Amended	48 Ky.R. 328	8-26-2021
201 KAR 023:150	47 Ky.R. 1503		201 KAR 026:301(r)	47 Ky.R. 2180	
Am Comments	2012		Withdrawn		6-22-2021
As Amended	2357	6-16-2021	201 KAR 026:310		
201 KAR 026:115			Amended	47 Ky.R. 2069	
Amended	47 Ky.R. 2037		As Amended	48 Ky.R. 328	8-26-2021
As Amended	48 Ky.R. 312	8-26-2021	Amended	1888	
Amended	1859		Am Comments	2459	
As Amended	2568		As Amended	2576	
201 KAR 026:121			201 KAR 030:040		
Amended	47 Ky.R. 2039		Amended	47 Ky.R. 1425	
As Amended	48 Ky.R. 313	8-26-2021	As Amended	1936	7-6-2021
201 KAR 026:125			201 KAR 030:190		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	47 Ky.R. 1428	7-6-2021	201 KAR 042:060		
201 KAR 032:030			Amended	48 Ky.R. 1253	
Amended	47 Ky.R. 1611		201 KAR 042:061	48 Ky.R. 1971	
Am Comments	2608		As Amended	2582	
As Amended	48 Ky.R. 329	8-26-2021	201 KAR 042:070		
201 KAR 032:035			Amended	48 Ky.R. 1255	
Amended	47 Ky.R. 1614		As Amended	2584	
As Amended	48 Ky.R. 330	8-26-2021	201 KAR 042:080		
201 KAR 032:060			Amended	48 Ky.R. 1891	
Amended	47 Ky.R. 1616		As Amended	2585	
Am Comments	2610		201 KAR 042:110		
As Amended	48 Ky.R. 332	8-26-2021	Amended	48 Ky.R. 1258	
201 KAR 033:015			As Amended	2587	
Amended	48 Ky.R. 2507		201 KAR 043:010		
As Amended	2962		Amended	48 Ky.R. 1894	
201 KAR 034:070	47 Ky.R. 2497		201 KAR 043:020		
As Amended	48 Ky.R. 1527	2-1-2022	Amended	48 Ky.R. 1896	
201 KAR 035:010			201 KAR 043:030		
Amended	47 Ky.R. 2071		Amended	48 Ky.R. 1898	
Am Comments	48 Ky.R. 62		201 KAR 043:040		
As Amended	334	8-26-2021	Amended	48 Ky.R. 1900	
201 KAR 035:020			Am Comments	2602	
Amended	47 Ky.R. 2073		201 KAR 043:050		
Am Comments	48 Ky.R. 64		Amended	48 Ky.R. 1904	
As Amended	335	8-26-2021	Am Comments	2605	
201 KAR 035:025			201 KAR 043:060		
Amended	47 Ky.R. 2077		Amended	48 Ky.R. 1909	
Am Comments	48 Ky.R. 68	8-26-2021	201 KAR 043:071	48 Ky.R. 1974	
201 KAR 035:040			201 KAR 043:080		
Amended	47 Ky.R. 2078		Amended	48 Ky.R. 1911	
Am Comments	48 Ky.R. 69		Am Comments	2610	
As Amended	338	8-26-2021	201 KAR 043:090	48 Ky.R. 1975	
201 KAR 035:050			201 KAR 043:100		
Amended	47 Ky.R. 2082		Amended	48 Ky.R. 1913	
Am Comments	48 Ky.R. 73		201 KAR 046:020		
As Amended	340	8-26-2021	Amended	48 Ky.R. 2274	
201 KAR 035:055			201 KAR 046:060		
Amended	47 Ky.R. 2084		Amended	48 Ky.R. 2509	
As Amended	48 Ky.R. 341	8-26-2021	As Amended	2966	
201 KAR 035:070			201 KAR 045:130		
Amended	47 Ky.R. 2086		Amended	47 Ky.R. 1251	6-16-2021
Am Comments	48 Ky.R. 76		201 KAR 047:010		
As Amended	342	8-26-2021	Amended	48 Ky.R. 543	
Amended	48 Ky.R. 2270		As Amended	1527	11-23-2021
As Amended	2963		201 KAR 047:030	48 Ky.R. 713	
201 KAR 035:075			As Amended	1529	11-23-2021
Amended	47 Ky.R. 2091		202 KAR 003:020		
Am Comments	48 Ky.R. 80		Amended	48 Ky.R. 546	2-1-2022
As Amended	345	8-26-2021	202 KAR 007:201		
201 KAR 035:080			Amended	47 Ky.R. 2428	
Amended	47 Ky.R. 2092		Am Comments	48 Ky.R. 390	9-22-2021
Am Comments	48 Ky.R. 81		202 KAR 007:301		
As Amended	346	8-26-2021	Amended	47 Ky.R. 2433	
201 KAR 042:010			Am Comments	48 Ky.R. 394	9-22-2021
Amended	48 Ky.R. 1241		202 KAR 007:330		
201 KAR 042:020			Amended	47 Ky.R. 2439	
Amended	48 Ky.R. 1242		Am Comments	48 Ky.R. 400	9-22-2021
As Amended	2577		202 KAR 007:401		
201 KAR 042:030			Amended	47 Ky.R. 2445	
Amended	48 Ky.R. 1244		Am Comments	48 Ky.R. 406	9-22-2021
As Amended	2578		202 KAR 007:540		
201 KAR 042:035			Amended	47 Ky.R. 2453	
Amended	48 Ky.R. 1246		Am Comments	48 Ky.R. 414	9-22-2021
As Amended	2578		202 KAR 007:545		
201 KAR 042:040			Amended	48 Ky.R. 2511	
Amended	48 Ky.R. 1248		Withdrawn		3-25-2022
As Amended	2579		Amended	48 Ky.R. 2851	
201 KAR 042:050			202 KAR 007:560		
Amended	48 Ky.R. 1251		Amended	48 Ky.R. 2276	
As Amended	2581		Withdrawn		3-25-2022

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	48 Ky.R. 2853		Amended	2861	
Withdrawn		5-3-2022	301 KAR 002:142		
Amended	48 Ky.R. 3036		Amended	48 Ky.R. 886	3-1-2022
202 KAR 007:601			301 KAR 002:172		
Amended	47 Ky.R. 2455		Amended	48 Ky.R. 2866	
As Amended	48 Ky.R. 416		301 KAR 002:221		
Am Comments	771	9-22-2021	Amended	47 Ky.R. 1253	
300 KAR 006:011	48 Ky.R. 3130		As Amended	1937	6-3-2021
301 KAR 001:012			Amended	48 Ky.R. 2869	
Amended	48 Ky.R. 112		301 KAR 002:224		
As Amended	1117	11-17-2021	Amended	48 Ky.R. 888	3-1-2022
301 KAR 001:016			301 KAR 002:228		
Amended	48 Ky.R. 113		Amended	47 Ky.R. 2469	8-5-2021
As Amended	1117	11-17-2021	301 KAR 002:230		
301 KAR 001:018			Amended	48 Ky.R. 142	
Amended	48 Ky.R. 117		As Amended	1127	11-17-2021
As Amended	1120	11-17-2021	301 KAR 002:251		
301 KAR 001:019			Amended	47 Ky.R. 2637	
Amended	48 Ky.R. 119		As Amended	48 Ky.R. 790	9-15-2021
As Amended	1121	11-17-2021	301 KAR 002:260		
301 KAR 001:031			Amended	48 Ky.R. 144	
Amended	48 Ky.R. 120		As Amended	1128	11-17-2021
As Amended	1121	11-17-2021	301 KAR 002:300		
301 KAR 001:050			Amended	47 Ky.R. 2640	
Amended	48 Ky.R. 122		As Amended	48 Ky.R. 792	9-15-2021
As Amended	1122	11-17-2021	301 KAR 003:010		
301 KAR 001:082			Amended	48 Ky.R. 889	
Amended	48 Ky.R. 123		As Amended	2203	5-3-2022
As Amended	1122	11-17-2021	301 KAR 003:012		
301 KAR 001:120			Amended	48 Ky.R. 892	3-1-2022
Amended	48 Ky.R. 124		301 KAR 003:026		
As Amended	1122	11-17-2021	Amended	48 Ky.R. 894	
301 KAR 001:125			As Amended	2205	5-3-2022
Amended	48 Ky.R. 125		301 KAR 003:027		
As Amended	1123	11-17-2021	Amended	48 Ky.R. 895	3-1-2022
301 KAR 001:140			301 KAR 003:030		
Amended	48 Ky.R. 128		Amended	48 Ky.R. 896	3-1-2022
As Amended	1124	11-17-2021	301 KAR 003:110		
301 KAR 001:152			Amended	48 Ky.R. 898	3-1-2022
Amended	48 Ky.R. 130		301 KAR 004:001		
As Amended	1125	11-17-2021	Amended	48 Ky.R. 899	
301 KAR 001:201			301 KAR 004:010		
Amended	47 Ky.R. 2627		Amended	48 Ky.R. 901	
As Amended	48 Ky.R. 782	9-15-2021	As Amended	2968	
Amended	2856		301 KAR 004:020		
301 KAR 001:210			Amended	48 Ky.R. 902	
Amended	48 Ky.R. 132	11-17-2021	As Amended	2968	
301 KAR 001:400			301 KAR 004:050		
Amended	47 Ky.R. 2468	8-5-2021	Amended	48 Ky.R. 903	3-1-2022
301 KAR 001:410			301 KAR 004:070		
Amended	48 Ky.R. 1915		Amended	48 Ky.R. 904	3-1-2022
301 KAR 002:015			301 KAR 004:091	48 Ky.R. 1977	
Amended	48 Ky.R. 133		As Amended	2404	
As Amended	1730	3-1-2022	301 KAR 004:100		
301 KAR 002:041			Amended	48 Ky.R. 906	
Amended	48 Ky.R. 135	11-17-2021	As Amended	2968	
301 KAR 002:050			301 KAR 004:110		
Amended	48 Ky.R. 138		Amended	48 Ky.R. 908	9-22-2021
As Amended	1127	11-17-2021	As Amended	2969	
301 KAR 002:082			301 KAR 005:001		
Amended	48 Ky.R. 881		Amended	48 Ky.R. 910	
Am Comments	2102		As Amended	2589	
As Amended	2200	5-3-2022	301 KAR 005:030		
301 KAR 002:084			Amended	48 Ky.R. 911	
Amended	48 Ky.R. 139	11-17-2021	As Amended	2589	
301 KAR 002:111			301 KAR 005:100		
Amended	48 Ky.R. 140	11-17-2021	Amended	48 Ky.R. 913	
301 KAR 002:132			As Amended	2591	
Amended	47 Ky.R. 2632		301 KAR 006:001		
As Amended	48 Ky.R. 787	9-15-2021	Amended	48 Ky.R. 915	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	2033		Amended	48 Ky.R. 549	
301 KAR 006:070			As Amended	1731	3-1-2022
Amended	48 Ky.R. 917	3-1-2022	501 KAR 002:050		
302 KAR 004:010	47 Ky.R. 1505		Amended	48 Ky.R. 551	2-1-2022
As Amended	1938	7-6-2021	501 KAR 002:060		
302 KAR 022:150			Amended	48 Ky.R. 552	
Amended	47 Ky.R. 1435		Am Comments	1610	
As Amended	1940	7-6-2021	As Amended	1732	3-1-2022
302 KAR 050:021			501 KAR 002:070		
Amended	48 Ky.R. 1631		Amended	48 Ky.R. 555	2-1-2022
Am Comments	2460		501 KAR 003:110		
302 KAR 050:031			Amended	48 Ky.R. 930	
Amended	48 Ky.R. 1640		As Amended	1734	3-1-2022
Am Comments	2469		501 KAR 003:120		
302 KAR 050:046	48 Ky.R. 1672		Amended	48 Ky.R. 931	3-1-2022
Am Comments	2476		501 KAR 003:130		
302 KAR 050:056			Amended	48 Ky.R. 934	
Amended	48 Ky.R. 1647		As Amended	1734	3-1-2022
Am Comments	2478		501 KAR 003:150		
302 KAR 050:080			Amended	48 Ky.R. 935	
Amended	48 Ky.R. 1652		As Amended	1735	3-1-2022
Am Comments	2483		501 KAR 003:170		
302 KAR 079:011	47 Ky.R. 1314		Amended	48 Ky.R. 938	3-1-2022
Am Comments	2014		501 KAR 006:030		
As Amended	2360	7-8-2021	Amended	48 Ky.R. 2118	
302 KAR 079:012	47 Ky.R. 1321		As Amended	2592	
Am Comments	2022		501 KAR 006:070		
As Amended	2367	7-8-2021	Amended	47 Ky.R. 1620	
303 KAR 001:005			As Amended	2368	8-3-2021
Amended	48 Ky.R. 918		501 KAR 006:080		
As Amended	2033	4-5-2022	Amended	47 Ky.R. 1255	
303 KAR 001:010			Am Comment	1748	7-6-2021
Amended	48 Ky.R. 920		501 KAR 006:190		
As Amended	2034	4-5-2022	Amended	48 Ky.R. 939	
303 KAR 001:015			As Amended	1737	3-1-2022
Amended	48 Ky.R. 921		501 KAR 006:200		
As Amended	2034	4-5-2022	Amended	48 Ky.R. 943	
303 KAR 001:075			As Amended	1740	3-1-2022
Amended	48 Ky.R. 922		501 KAR 006:250		
As Amended	2034	4-5-2022	Amended	48 Ky.R. 946	
303 KAR 001:080			As Amended	1742	3-1-2022
Amended	48 Ky.R. 923		501 KAR 006:290	48 Ky.R. 1978	
As Amended	2035	4-5-2022	Am Comments	2484	
303 KAR 001:090			As Amended	2593	
Amended	48 Ky.R. 925		501 KAR 007:040		
As Amended	2036	4-5-2022	Amended	48 Ky.R. 951	3-1-2022
303 KAR 001:100			501 KAR 007:060		
Amended	48 Ky.R. 927		Amended	48 Ky.R. 952	3-1-2022
As Amended	2037	4-5-2022	501 KAR 007:090		
303 KAR 001:110	48 Ky.R. 1066	4-5-2022	Amended	48 Ky.R. 954	3-1-2022
401 KAR 039:060			501 KAR 007:100		
Amended	47 Ky.R. 2095	8-5-2021	Amended	48 Ky.R. 956	3-1-2022
401 KAR 051:010			501 KAR 007:110		
Amended	48 Ky.R. 2278		Amended	48 Ky.R. 957	3-1-2022
As Amended	2729		501 KAR 007:120		
401 KAR 060:005			Amended	48 Ky.R. 958	3-1-2022
Amended	47 Ky.R. 1443		501 KAR 007:130		
As Amended	1947	6-3-2021	Amended	48 Ky.R. 960	
401 KAR 061:036			As Amended	1746	3-1-2022
Amended	47 Ky.R. 1447		501 KAR 007:140		
Am Comments	2024	6-3-2021	Amended	48 Ky.R. 962	
401 KAR 063:002			As Amended	1746	3-1-2022
Amended	47 Ky.R. 1449		501 KAR 007:150		
As Amended	1950	6-3-2021	Amended	48 Ky.R. 964	
500 KAR 012:010			As Amended	1747	3-1-2022
Amended	48 Ky.R. 548	2-1-2022	501 KAR 014:010		
501 KAR 001:050			Amended	48 Ky.R. 965	
Amended	48 Ky.R. 928		As Amended	1748	3-1-2022
As Amended	1731	3-1-2022	502 KAR 010:010		
501 KAR 002:020			Amended	48 Ky.R. 1260	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
502 KAR 010:020 Amended	48 Ky.R. 1262		Am Comments 502 KAR 030:060 Amended	2254 48 Ky.R. 1312	
502 KAR 010:030 Amended Am Comments	48 Ky.R. 1263 2241		502 KAR 030:070 Amended Am Comments	48 Ky.R. 1314 2256	
502 KAR 010:035 Amended	48 Ky.R. 1264		502 KAR 031:020 Amended As Amended	48 Ky.R. 1316 2043	4-5-2022
502 KAR 010:040 Amended Am Comments	48 Ky.R. 1266 2243		502 KAR 035:010 Amended As Amended	48 Ky.R. 1318 2406	
502 KAR 010:050 Amended	48 Ky.R. 1268		502 KAR 035:020 Amended As Amended	48 Ky.R. 1320 2406	
502 KAR 010:060 Amended	48 Ky.R. 1269		502 KAR 035:030 Amended As Amended	48 Ky.R. 1321 2406	
502 KAR 010:070 Amended Am Comments	48 Ky.R. 1270 2246		502 KAR 035:040 Amended Am Comments	48 Ky.R. 1322 2259	
502 KAR 010:080 Amended	48 Ky.R. 1272		502 KAR 035:050 Amended As Amended	48 Ky.R. 1324 2407	
502 KAR 010:090 Amended	48 Ky.R. 1273		502 KAR 040:010 Amended As Amended	48 Ky.R. 1325 2044	4-5-2022
502 KAR 010:110 Amended	48 Ky.R. 1276		502 KAR 045:005 Amended As Amended	48 Ky.R. 1326 2407	
502 KAR 010:120 Amended	48 Ky.R. 1278		502 KAR 045:015 Amended Am Comments	48 Ky.R. 1328 2261	
502 KAR 011:010 Amended	48 Ky.R. 1280		502 KAR 045:035 Amended As Amended	48 Ky.R. 1329 2408	
502 KAR 011:060 Amended	48 Ky.R. 1282		502 KAR 045:045 Amended As Amended	48 Ky.R. 1331 2409	
502 KAR 011:070 Amended	48 Ky.R. 1284		502 KAR 045:075 Amended As Amended	48 Ky.R. 1332 2409	
502 KAR 012:010 Amended As Amended	48 Ky.R. 1286 2038	4-5-2022	502 KAR 045:085 Amended As Amended	48 Ky.R. 1334 2410	
502 KAR 013:010 Amended Am Comments	48 Ky.R. 1289 2248		502 KAR 045:105 Amended As Amended	48 Ky.R. 1335 2410	
502 KAR 013:030 Amended	48 Ky.R. 1291		502 KAR 045:115 Amended As Amended	48 Ky.R. 1336 2411	
502 KAR 013:040 Amended	48 Ky.R. 1292		502 KAR 045:150 Amended	48 Ky.R. 1338	
502 KAR 013:050 Amended	48 Ky.R. 1294		502 KAR 047:010 Amended	48 Ky.R. 1339	4-5-2022
502 KAR 013:060 Amended	48 Ky.R. 1295		502 KAR 050:010 Amended As Amended	48 Ky.R. 1340 2045	4-5-2022
502 KAR 013:080 Amended	48 Ky.R. 1297		503 KAR 001:060 Amended As Amended	48 Ky.R. 966 2046	4-5-2022
502 KAR 014:010 Amended As Amended	48 Ky.R. 1298 2040	4-5-2022	503 KAR 001:080 Amended	48 Ky.R. 968	4-5-2022
502 KAR 015:010 Amended As Amended	48 Ky.R. 1300 2594		503 KAR 001:090 Amended As Amended	48 Ky.R. 970 2046	4-5-2022
502 KAR 015:020 Amended As Amended	48 Ky.R. 1301 2405		503 KAR 001:100 Amended As Amended	48 Ky.R. 971 2047	4-5-2022
502 KAR 020:020 Amended As Amended	48 Ky.R. 1303 2041	4-5-2022	503 KAR 001:110		
502 KAR 030:010 Amended Am Comments	48 Ky.R. 1306 2250				
502 KAR 030:020 Amended Am Comments	48 Ky.R. 1308 2252				
502 KAR 030:030 Amended Am Comments	48 Ky.R. 1309 2253				
502 KAR 030:050 Amended	48 Ky.R. 1310				

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	48 Ky.R. 973		605 KAR 001:130		
As Amended	2048	4-5-2022	Amended	47 Ky.R. 2646	
503 KAR 001:120			605 KAR 001:131	48 Ky.R. 1678	
Amended	48 Ky.R. 976		As Amended	2207	2-16-2022
As Amended	2050	4-5-2022	605 KAR 001:191	48 Ky.R. 1680	
503 KAR 001:140			As Amended	2208	2-16-2022
Amended	48 Ky.R. 979		605 KAR 001:211	48 Ky.R. 1682	
As Amended	2051	4-5-2022	As Amended	2209	2-16-2022
503 KAR 001:170			605 KAR 001:215	47 Ky.R. 2766	
Amended	48 Ky.R. 986		As Amended	48 Ky.R. 1130	11-15-2021
As Amended	2058	4-5-2022	701 KAR 005:080		
503 KAR 003:020			Repealed	47 Ky.R. 2505	11-2-2021
Amended	48 Ky.R. 1342		701 KAR 005:081	47 Ky.R. 2505	11-2-2021
As Amended	2065	4-5-2022	701 KAR 005:100		
503 KAR 003:030			Amended	47 Ky.R. 2471	
Amended	48 Ky.R. 1346		As Amended	48 Ky.R. 795	11-30-2021
As Amended	2068	4-5-2022	701 KAR 005:160	48 Ky.R. 1075	
503 KAR 003:050			As Amended	1748	3-1-2022
Amended	48 Ky.R. 1348		702 KAR 001:116	48 Ky.R. 2133	
As Amended	2070	4-5-2022	As Amended	2595	
503 KAR 004:010			702 KAR 001:140		
Amended	48 Ky.R. 1350		Amended	48 Ky.R. 3039	
As Amended	2071	4-5-2022	702 KAR 001:191	48 Ky.R. 1078	
503 KAR 004:040			Am Comments	2106	
Amended	48 Ky.R. 1352		As Amended	2210	
As Amended	2071	4-5-2022	702 KAR 003:060		
503 KAR 004:050			Amended	47 Ky.R. 2474	
Amended	48 Ky.R. 1353		As Amended	48 Ky.R. 347	11-2-2021
As Amended	2072	4-5-2022	702 KAR 003:090		
503 KAR 005:080			Amended	48 Ky.R. 2513	
Amended	48 Ky.R. 1355		As Amended	2970	
As Amended	2074	4-5-2022	702 KAR 005:080		
503 KAR 005:100			Amended	47 Ky.R. 1454	
Amended	48 Ky.R. 1357		As Amended	1957	7-6-2021
As Amended	2074	4-5-2022	702 KAR 007:065		
601 KAR 001:005			Amended	48 Ky.R. 1653	
Amended	47 Ky.R. 2101	8-3-2021	As Amended	2210	5-3-2022
601 KAR 001:030			702 KAR 007:125		
Repealed	47 Ky.R. 475	10-5-2021	Amended	48 Ky.R. 995	4-5-2022
601 KAR 001:113			702 KAR 007:150	48 Ky.R. 233	
Amended	47 Ky.R. 1256		Am Comments	1612	3-1-2022
As Amended	1954	7-6-2021	703 KAR 005:070		
601 KAR 002:231	47 Ky.R. 475	10-5-2021	Amended	47 Ky.R. 2476	
601 KAR 002:233	47 Ky.R. 2499		As Amended	48 Ky.R. 796	11-30-2021
Am Comments	48 Ky.R. 429	11-30-2021	703 KAR 005:225		
601 KAR 023:030	47 Ky.R. 1324		Amended	47 Ky.R. 2478	
As Amended	1957	7-6-2021	As Amended	48 Ky.R. 797	11-30-2021
603 KAR 003:100	48 Ky.R. 1434		703 KAR 005:240		
As Amended	2075	1-25-2022	Amended	47 Ky.R. 2480	
603 KAR 004:035			As Amended	48 Ky.R. 798	11-30-2021
Amended	48 Ky.R. 1359		703 KAR 005:270		
Withdrawn		12-13-2021	Amended	47 Ky.R. 1829	
603 KAR 005:150			Am Comments	48 Ky.R. 83	
Amended	48 Ky.R. 1918		As Amended	348	11-2-2021
603 KAR 005:360	48 Ky.R. 1067		703 KAR 005:280		
As Amended	2076	1-25-2022	Amended	47 Ky.R. 1458	
603 KAR 010:040	48 Ky.R. 1069		Am Comments	2405	8-3-2021
Am Comments	1776		704 KAR 003:395	48 Ky.R. 2135	
As Amended	2077	1-25-2022	As Amended	2596	
605 KAR 001:030			704 KAR 007:120		
Amended	47 Ky.R. 2643		Repealed	48 Ky.R. 235	3-1-2022
As Amended	48 Ky.R. 1128	11-15-2021	704 KAR 007:121	48 Ky.R. 235	3-1-2022
605 KAR 001:035	47 Ky.R. 2765		702 KAR 007:170	48 Ky.R. 2139	
As Amended	48 Ky.R. 1128	11-15-2021	Am Comments	2760	
605 KAR 001:051	48 Ky.R. 1647		As Amended	2971	
As Amended	2006	2-16-2022	704 KAR 008:110	47 Ky.R. 1508	
605 KAR 001:071	48 Ky.R. 1675		As Amended	1960	7-6-2021
As Amended	2206	2-16-2022	704 KAR 019:002		
605 KAR 001:091	48 Ky.R. 1677		Amended	48 Ky.R. 2120	
As Amended	2207	2-16-2022	Am Comments	2762	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	2971		Amended	48 Ky.R. 590	2-1-2022
707 KAR 001:340			787 KAR 001:150	48 Ky.R. 592	
Amended	47 Ky.R. 2648		As Amended	1536	2-1-2022
As Amended	48 Ky.R. 1131	1-4-2022	787 KAR 001:210	48 Ky.R. 593	
725 KAR 001:010			Amended	1537	2-1-2022
Amended	48 Ky.R. 556		As Amended	48 Ky.R. 595	
As Amended	2213	5-3-2022	787 KAR 001:220	48 Ky.R. 595	
725 KAR 001:020			Amended	1537	2-1-2022
Amended	48 Ky.R. 558		As Amended	48 Ky.R. 596	
As Amended	2214	5-3-2022	787 KAR 001:260	48 Ky.R. 596	
725 KAR 001:025			Amended	1538	2-1-2022
Amended	48 Ky.R. 559	5-3-2022	As Amended	48 Ky.R. 598	
725 KAR 001:030			787 KAR 001:290	48 Ky.R. 598	2-1-2022
Amended	48 Ky.R. 561		Amended	48 Ky.R. 599	
As Amended	2214	5-3-2022	As Amended	1538	2-1-2022
725 KAR 001:040			787 KAR 001:300	48 Ky.R. 599	
Amended	48 Ky.R. 562		Amended	1538	2-1-2022
As Amended	2215	5-3-2022	As Amended	48 Ky.R. 600	
725 KAR 001:050			As Amended	1539	2-1-2022
Amended	48 Ky.R. 564		787 KAR 001:360	47 Ky.R. 2768	
As Amended	2215	5-3-2022	As Amended	48 Ky.R. 800	11-30-2021
725 KAR 001:061			787 KAR 001:360	48 Ky.R. 3041	
Amended	48 Ky.R. 566		Amended	48 Ky.R. 1023	3-1-2022
As Amended	2217	5-3-2022	787 KAR 002:040	48 Ky.R. 1023	
725 KAR 002:015			Amended	2872	
Amended	48 Ky.R. 568		Amended	48 Ky.R. 1980	
As Amended	2218	5-3-2022	787 KAR 003:020	48 Ky.R. 1980	
725 KAR 002:080			Am Comments	2611	
Amended	48 Ky.R. 573		As Amended	2732	
As Amended	2221	5-3-2022	791 KAR 001:010	48 Ky.R. 1024	
739 KAR 002:060			Amended	48 Ky.R. 1024	
Amended	48 Ky.R. 574		791 KAR 001:020	48 Ky.R. 1028	
As Amended	1750	3-1-2022	Amended	48 Ky.R. 1028	
745 KAR 001:035			791 KAR 001:025	48 Ky.R. 1032	
Amended	48 Ky.R. 1362		Amended	48 Ky.R. 1032	
As Amended	2082	4-5-2022	791 KAR 001:027	48 Ky.R. 1034	
780 KAR 003:020			Amended	48 Ky.R. 1034	
Amended	48 Ky.R. 2515		791 KAR 001:030	48 Ky.R. 1035	
781 KAR 001:010			Amended	48 Ky.R. 1035	
Amended	48 Ky.R. 999		791 KAR 001:035	48 Ky.R. 1037	
781 KAR 001:020			Amended	48 Ky.R. 1037	
Amended	48 Ky.R. 1002		791 KAR 001:040	48 Ky.R. 1039	
781 KAR 001:030			Amended	48 Ky.R. 1040	
Amended	48 Ky.R. 1006		791 KAR 001:050	48 Ky.R. 1040	
781 KAR 001:040			Amended	48 Ky.R. 1042	
Amended	48 Ky.R. 1008		791 KAR 001:060	48 Ky.R. 1042	
781 KAR 001:050			Amended	48 Ky.R. 1044	
Amended	48 Ky.R. 1011		791 KAR 001:070	48 Ky.R. 1044	
782 KAR 001:010			Amended	48 Ky.R. 1046	
Amended	48 Ky.R. 1014		791 KAR 001:080	48 Ky.R. 1046	
782 KAR 001:070			Amended	48 Ky.R. 1048	
Amended	48 Ky.R. 1020		791 KAR 001:100	48 Ky.R. 1048	
787 KAR 001:010			Amended	48 Ky.R. 1050	
Amended	48 Ky.R. 578		791 KAR 001:150	48 Ky.R. 1050	
As Amended	1531	2-1-2022	Amended	48 Ky.R. 1051	
787 KAR 001:020			791 KAR 001:155	48 Ky.R. 1051	
Amended	48 Ky.R. 579		Amended	48 Ky.R. 1053	
As Amended	1531	2-1-2022	791 KAR 001:160	48 Ky.R. 1053	
787 KAR 001:060			Amended	48 Ky.R. 145	
Amended	48 Ky.R. 581		803 KAR 001:005	48 Ky.R. 145	
As Amended	1532	2-1-2022	Amended	48 Ky.R. 2326	
787 KAR 001:080			Am Comments	2765	
Amended	48 Ky.R. 582	2-1-2022	As Amended	2973	
787 KAR 001:090			803 KAR 001:025	48 Ky.R. 149	
Amended	48 Ky.R. 584		Amended	48 Ky.R. 2328	
As Amended	1532	2-1-2022	803 KAR 001:026	48 Ky.R. 2328	
787 KAR 001:110			As Amended	2974	
Amended	48 Ky.R. 586				
As Amended	1533	2-1-2022			
787 KAR 001:140					

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
803 KAR 001:060			As Amended	2372	8-3-2021
Amended	48 Ky.R. 154		803 KAR 002:110		
803 KAR 001:061	48 Ky.R. 2331		Amended	47 Ky.R. 2663	
Am Comments	2737		As Amended	48 Ky.R. 804	11-30-2021
As Amended	2977		803 KAR 002:115		
803 KAR 001:063			Amended	47 Ky.R. 1475	
Amended	48 Ky.R. 160		As Amended	2373	8-3-2021
Expired before Effective		8-26-2021	803 KAR 002:120		
803 KAR 001:064	48 Ky.R. 2335		Amended	47 Ky.R. 1624	
As Amended	2980		As Amended	2373	8-3-2021
803 KAR 001:065			803 KAR 002:122		
Amended	48 Ky.R. 161		Amended	47 Ky.R. 2665	
Expired before Effective		8-26-2021	As Amended	48 Ky.R. 805	11-30-2021
803 KAR 001:066			803 KAR 002:125		
Amended	48 Ky.R. 164		Amended	47 Ky.R. 2669	
803 KAR 001:067	48 Ky.R. 2336		As Amended	48 Ky.R. 807	11-30-2021
As Amended	2980		803 KAR 002:127		
803 KAR 001:068	48 Ky.R. 2337		Amended	47 Ky.R. 2671	
As Amended	2980		As Amended	48 Ky.R. 808	11-30-2021
803 KAR 001:070			803 KAR 002:130		
Amended	48 Ky.R. 166		Amended	47 Ky.R. 2673	
803 KAR 001:071	48 Ky.R. 2339		As Amended	48 Ky.R. 809	11-30-2021
Am Comments	2770		803 KAR 002:140		
As Amended	2981		Amended	47 Ky.R. 2674	
803 KAR 001:075			As Amended	48 Ky.R. 809	11-30-2021
Amended	48 Ky.R. 178		803 KAR 002:170		
803 KAR 001:076	48 Ky.R. 2342		Amended	47 Ky.R. 2670	
As Amended	2984		As Amended	48 Ky.R. 810	11-30-2021
803 KAR 001:080			803 KAR 002:180		
Amended	48 Ky.R. 180		Repealed	48 Ky.R. 2531	11-2-2021
803 KAR 001:081	48 Ky.R. 2344		803 KAR 002:181		
As Amended	2985		Amended	47 Ky.R. 2772	
803 KAR 001:090			As Amended	48 Ky.R. 2531	11-30-2021
Amended	48 Ky.R. 184		803 KAR 002:220		
803 KAR 001:091	48 Ky.R. 2347		Amended	47 Ky.R. 2684	
Am Comments	2774		As Amended	48 Ky.R. 815	11-30-2021
As Amended	2987		803 KAR 002:230		
803 KAR 002:010			Amended	47 Ky.R. 2685	11-30-2021
Amended	47 Ky.R. 1261		803 KAR 002:240		
As Amended	1960	7-6-2021	Amended	47 Ky.R. 1477	
803 KAR 002:011	47 Ky.R. 2769	11-30-2021	As Amended	2374	8-3-2021
803 KAR 002:019			803 KAR 002:250		
Amended	47 Ky.R. 1622		Amended	47 Ky.R. 2687	
As Amended	2369	8-3-2021	As Amended	48 Ky.R. 816	11-30-2021
803 KAR 002:021			803 KAR 002:306		
Amended	47 Ky.R. 1465		Amended	47 Ky.R. 2690	
803 KAR 002:041	47 Ky.R. 2770	11-30-2021	Withdrawn		9-5-2014
803 KAR 002:050			803 KAR 002:308		
Amended	47 Ky.R. 1467		Amended	47 Ky.R. 2692	11-30-2021
As Amended	2370	8-3-2021	803 KAR 002:309		
803 KAR 002:060			Amended	47 Ky.R. 1626	
Amended	47 Ky.R. 2655		As Amended	2374	8-3-2021
As Amended	48 Ky.R. 800	11-30-2021	803 KAR 002:310		
803 KAR 002:062			Amended	47 Ky.R. 2695	11-30-2021
Amended	47 Ky.R. 2658		803 KAR 002:314		
As Amended	48 Ky.R. 803	11-30-2021	Amended	47 Ky.R. 1478	
803 KAR 002:070			As Amended	2375	8-3-2021
Amended	47 Ky.R. 2660		803 KAR 002:320		
As Amended	48 Ky.R. 803	11-30-2021	Amended	47 Ky.R. 1628	
803 KAR 002:080			As Amended	2376	8-3-2021
Amended	47 Ky.R. 1469		803 KAR 002:321		
As Amended	2371	8-3-2021	803 KAR 002:325		
803 KAR 002:090			Amended	47 Ky.R. 2697	
Amended	47 Ky.R. 1471		As Amended	48 Ky.R. 1539	2-1-2022
As Amended	2371	8-3-2021	803 KAR 002:401		
803 KAR 002:095			Amended	47 Ky.R. 1634	
Repealed	47 Ky.R. 1509	8-3-2021	As Amended	2380	8-3-2021
803 KAR 002:096(r)	47 Ky.R. 1509	8-3-2021	803 KAR 002:402		
803 KAR 002:100			Amended	48 Ky.R. 2517	
Amended	47 Ky.R. 1473		803 KAR 002:405		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	47 Ky.R. 1636		As Amended	1136	1-4-2022
803 KAR 002:408	As Amended 2380	8-3-2021	803 KAR 025:170		
Amended	47 Ky.R. 1638		Amended	47 Ky.R. 1266	
As Amended	2381	8-3-2021	As Amended	48 Ky.R. 1137	1-4-2022
803 KAR 002:409			803 KAR 025:175		
Amended	47 Ky.R. 1639		Amended	47 Ky.R. 1268	
As Amended	2381	8-3-2021	As Amended	48 Ky.R. 1138	1-4-2022
803 KAR 002:410			803 KAR 025:185		
Amended	47 Ky.R. 1641		Amended	47 Ky.R. 1269	
As Amended	2381	8-3-2021	As Amended	48 Ky.R. 1138	1-4-2022
803 KAR 002:411			803 KAR 025:190		
Amended	48 Ky.R. 2519		Amended	47 Ky.R. 2116	
803 KAR 002:413			Am Comments	48 Ky.R. 435	
Amended	47 Ky.R. 1480		As Amended	1753	3-1-2022
As Amended	2382	8-3-2021	803 KAR 025:195		
803 KAR 002:414			Amended	48 Ky.R. 2881	
Amended	47 Ky.R. 1643		803 KAR 025:220		
As Amended	2382	8-3-2021	Amended	47 Ky.R. 2123	
803 KAR 002:415			As Amended	48 Ky.R. 826	11-30-2021
Amended	47 Ky.R. 1645		803 KAR 025:300	47 Ky.R. 1511	
As Amended	2383	8-3-2021	As Amended	1962	7-6-2021
803 KAR 002:416			804 KAR 001:102	48 Ky.R. 2884	
Amended	47 Ky.R. 1647		804 KAR 004:212	48 Ky.R. 1435	
As Amended	2383	8-3-2021	As Amended	2082	4-5-2022
803 KAR 002:417			804 KAR 004:221	48 Ky.R. 1437	
Amended	47 Ky.R. 1648		Am Comments	2108	
As Amended	2384	8-3-2021	As Amended	2222	5-3-2022
803 KAR 002:419			804 KAR 004:251	48 Ky.R. 1439	
Amended	48 Ky.R. 2521		As Amended	2083	4-5-2022
803 KAR 002:420			804 KAR 004:415		
Amended	47 Ky.R. 1482		Amended	48 Ky.R. 1919	
As Amended	2384	8-3-2021	804 KAR 004:480	48 Ky.R. 1441	
803 KAR 002:423			As Amended	2083	4-5-2022
Amended	47 Ky.R. 2708		804 KAR 011:041	48 Ky.R. 2886	
Withdrawn		9-5-2014	804 KAR 014:011	48 Ky.R. 2888	
803 KAR 002:424			806 KAR 002:060	47 Ky.R. 1714	
Amended	47 Ky.R. 1650		As Amended	2387	8-3-2021
As Amended	2386	8-3-2021	806 KAR 004:010		
803 KAR 002:426	48 Ky.R. 2143		Amended	47 Ky.R. 2714	
803 KAR 002:430			As Amended	48 Ky.R. 1139	1-4-2022
Repealed	47 Ky.R. 1509	8-3-2021	806 KAR 005:025		
803 KAR 2:435			Amended	48 Ky.R. 1363	
Amended	47 Ky.R. 2710		As Amended	2084	4-5-2022
As Amended	48 Ky.R. 817	11-30-2021	806 KAR 009:025		
803 KAR 2:440			Amended	47 Ky.R. 806	
Amended	47 Ky.R. 2712		Am Comments	1600	
As Amended	48 Ky.R. 818	11-30-2021	As Amended	48 Ky.R. 1141	1-4-2022
803 KAR 002:445			806 KAR 009:360		
Amended	48 Ky.R. 2522		Amended	47 Ky.R. 813	
803 KAR 002:600			As Amended	1963	7-6-2021
Amended	47 Ky.R. 1652		806 KAR 009:380	48 Ky.R. 2889	
As Amended	2386	8-3-2021	806 KAR 009:390	48 Ky.R. 2891	
803 KAR 005:005	48 Ky.R. 2660		806 KAR 010:030		
803 KAR 025:015			Amended	48 Ky.R. 1657	
Amended	47 Ky.R. 2107		Withdrawn		1-4-2022
As Amended	48 Ky.R. 352	11-2-2021	806 KAR 011:020		
803 KAR 025:021			Amended	48 Ky.R. 602	
Amended	47 Ky.R. 2109		As Amended	1759	3-1-2022
As Amended	48 Ky.R. 818	11-30-2021	806 KAR 012:010		
803 KAR 025:091			Amended	48 Ky.R. 1657	
Amended	47 Ky.R. 803		As Amended	2222	5-3-2022
Am Comments	1597		806 KAR 012:095		
As Amended	48 Ky.R. 824	11-30-2021	Amended	47 Ky.R. 2717	
803 KAR 025:092			As Amended	48 Ky.R. 827	11-30-2021
Amended	47 Ky.R. 1264		806 KAR 012:120		
Am Comments	2026		Amended	47 Ky.R. 815	
As Amended	2585	8-31-2021	Am Comments	1604	
803 KAR 025:165	47 Ky.R. 2774		As Amended	48 Ky.R. 1144	1-4-2022
Am Comments	48 Ky.R. 837		806 KAR 013:150		
			Amended	47 Ky.R. 2721	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	48 Ky.R. 1148	1-4-2022	806 KAR 017:370		
806 KAR 014:005			Amended	48 Ky.R. 200	
Amended	47 Ky.R. 1654		As Amended	1169	1-4-2022
As Amended	2387	8-3-2021	806 KAR 017:450		
806 KAR 014:007			Amended	48 Ky.R. 202	
Amended	47 Ky.R. 1656		As Amended	1171	1-4-2022
As Amended	2388	8-3-2021	806 KAR 017:470		
Amended	48 Ky.R. 1662		Amended	48 Ky.R. 205	
As Amended	2224	5-3-2022	As Amended	1554	2-1-2022
806 KAR 014:090			806 KAR 017:510		
Amended	47 Ky.R. 1658		Repealed	48 Ky.R. 1173	1-4-2022
As Amended	2389	8-3-2021	806 KAR 017:511(r)	47 Ky.R. 2775	
806 KAR 014:110			As Amended	48 Ky.R. 1173	1-4-2022
Amended	47 Ky.R. 1659		806 KAR 017:575		
As Amended	2390	8-3-2021	Amended	48 Ky.R. 1924	
806 KAR 014:121			As Amended	2412	
Amended	47 Ky.R. 1661		806 KAR 017:580	47 Ky.R. 2777	
As Amended	2586	8-31-2021	As Amended	48 Ky.R. 831	11-30-2021
806 KAR 015:050			806 KAR 017:585	48 Ky.R. 3138	
Amended	47 Ky.R. 1664		806 KAR 017:590	48 Ky.R. 1684	
Am Comments	2413		As Amended	2413	
As Amended	2588	8-31-2021	806 KAR 018:030		
806 KAR 015:060			Amended	48 Ky.R. 1926	
Amended	47 Ky.R. 1668		As Amended	2414	
As Amended	2390	8-3-2021	806 KAR 019:050		
806 KAR 015:070			Amended	47 Ky.R. 1675	
Amended	47 Ky.R. 1673		As Amended	2396	8-3-2021
As Amended	2394	8-3-2021	806 KAR 019:060		
806 KAR 015:090			Amended	47 Ky.R. 1676	
Amended	47 Ky.R. 2725		As Amended	2396	8-3-2021
As Amended	48 Ky.R. 830	11-30-2021	806 KAR 039:050		
806 KAR 017:070			Amended	47 Ky.R. 1678	
Amended	47 Ky.R. 2726		As Amended	2397	8-3-2021
As Amended	48 Ky.R. 1151	1-4-2022	806 KAR 039:070		
806 KAR 017:085			Amended	48 Ky.R. 607	
Amended	47 Ky.R. 2729		As Amended	1761	3-1-2022
As Amended	48 Ky.R. 1153	1-4-2022	806 KAR 040:020		
806 KAR 017:095			Amended	47 Ky.R. 1680	
Repealed	48 Ky.R. 1173	1-4-2022	As Amended	2398	8-3-2021
806 KAR 017:100			806 KAR 046:050		
Amended	47 Ky.R. 2734		Amended	48 Ky.R. 207	
As Amended	48 Ky.R. 1158	1-4-2022	As Amended	1173	1-4-2022
806 KAR 017:150			806 KAR 052:030		
Amended	47 Ky.R. 2736		Amended	47 Ky.R. 2744	
As Amended	48 Ky.R. 1159	1-4-2022	As Amended	48 Ky.R. 831	11-30-2021
806 KAR 017:170			807 KAR 005:015	47 Ky.R. 2778	
Repealed	48 Ky.R. 1173	1-4-2022	Am Comments	48 Ky.R. 1181	
806 KAR 017:230			As Amended	1555	2-1-2022
Amended	47 Ky.R. 2742		807 KAR 005:056		
As Amended	48 Ky.R. 1164	1-4-2022	Amended	47 Ky.R. 1485	
806 KAR 017:240			As Amended	1965	6-3-2021
Amended	48 Ky.R. 186		810 KAR 002:001		
As Amended	1550	2-1-2022	Amended	47 Ky.R. 2125	
806 KAR 017:260			As Amended	48 Ky.R. 353	8-12-2021
Amended	48 Ky.R. 188		810 KAR 002:020		
As Amended	1164	1-4-2022	Amended	47 Ky.R. 1271	7-6-2021
806 KAR 017:270			810 KAR 003:001		
Amended	48 Ky.R. 190		Amended	47 Ky.R. 2127	
As Amended	1551	2-1-2022	As Amended	48 Ky.R. 354	8-12-2021
806 KAR 017:280			810 KAR 003:020		
Amended	48 Ky.R. 191		Amended	48 Ky.R. 2620	
As Amended	1551	2-1-2022	810 KAR 004:001		
806 KAR 017:290			Amended	47 Ky.R. 2130	
Amended	48 Ky.R. 195		As Amended	48 Ky.R. 355	8-12-2021
As Amended	1165	1-4-2022	810 KAR 004:010		
806 KAR 017:300			Amended	47 Ky.R. 1274	
Amended	48 Ky.R. 1921		As Amended	1965	7-6-2021
As Amended	2411		Amended	48 Ky.R. 2626	
806 KAR 017:350			810 KAR 004:030		
Amended	48 Ky.R. 605		Amended	47 Ky.R. 1277	7-6-2021

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	48 Ky.R. 2629		Amended	48 Ky.R. 3056	
810 KAR 004:040			815 KAR 010:060		
Amended	48 Ky.R. 610		Amended	48 Ky.R. 623	
As Amended	1561	2-1-2022	As Amended	1766	3-1-2022
810 KAR 004:060			Amended	3060	
Amended	48 Ky.R. 2633		815 KAR 010:070		
810 KAR 005:001			Amended	48 Ky.R. 627	3-1-2022
Amended	47 Ky.R. 2132		815 KAR 020:050		
As Amended	48 Ky.R. 357	8-12-2021	Amended	48 Ky.R. 629	3-1-2022
810 KAR 005:030			815 KAR 020:150		
Amended	48 Ky.R. 1375	4-5-2022	Amended	47 Ky.R. 1098	
810 KAR 005:060			As Amended	1587	
Amended	48 Ky.R. 1378	4-5-2022	As Amended	1967	6-15-2021
810 KAR 005:070			815 KAR 020:195		
Amended	48 Ky.R. 1383	4-5-2022	Amended	48 Ky.R. 631	3-1-2022
810 KAR 005:080			815 KAR 030:010		
Amended	47 Ky.R. 2135		Amended	48 Ky.R. 633	3-1-2022
As Amended	48 Ky.R. 27	10-5-2021	815 KAR 030:060		
810 KAR 006:001			Amended	48 Ky.R. 635	
Amended	47 Ky.R. 2138		As Amended	1769	3-1-2022
As Amended	48 Ky.R. 359	8-12-2021	815 KAR 035:020		
Amended	1929		Amended	48 Ky.R. 1664	5-3-2022
As Amended	2416		900 KAR 001:050	48 Ky.R. 3139	
810 KAR 006:010	47 Ky.R. 2181		900 KAR 005:020		
As Amended	48 Ky.R. 362	8-12-2021	Amended	48 Ky.R. 2524	
810 KAR 006:020			900 KAR 006:075		
Amended	47 Ky.R. 2142		Amended	48 Ky.R. 2526	
As Amended	48 Ky.R. 363	8-12-2021	900 KAR 006:030		
810 KAR 006:030	47 Ky.R. 2184		Amended	47 Ky.R. 1682	
As Amended	48 Ky.R. 372	8-12-2021	As Amended	2591	6-16-2021
810 KAR 007:050			900 KAR 006:055		
Amended	48 Ky.R. 2282		Amended	47 Ky.R. 1683	
As Amended	2732		Am Comments	2417	
810 KAR 008:010			As Amended	2591	6-16-2021
Amended	47 Ky.R. 2152		900 KAR 006:060		
As Amended	48 Ky.R. 29	10-5-2021	Amended	47 Ky.R. 1685	6-16-2021
Amended	3043		900 KAR 006:065		
810 KAR 008:020			Amended	47 Ky.R. 1687	
Amended	47 Ky.R. 2159		As Amended	2592	6-16-2021
810 KAR 008:025	47 Ky.R. 2188		900 KAR 006:080		
As Amended	48 Ky.R. 35	10-5-2021	Amended	47 Ky.R. 1691	6-16-2021
Amended	1933		900 KAR 006:090		
810 KAR 008:030			Amended	47 Ky.R. 1693	
Amended	47 Ky.R. 2167		As Amended	2594	6-16-2021
As Amended	48 Ky.R. 39	10-5-2021	900 KAR 006:095		
810 KAR 008:040			Amended	47 Ky.R. 1695	6-16-2021
Amended	47 Ky.R. 2174		900 KAR 006:100		
As Amended	48 Ky.R. 44	10-5-2021	Amended	47 Ky.R. 1698	
810 KAR 008:060			As Amended	2597	6-16-2021
Amended	47 Ky.R. 1281	7-6-2021	900 KAR 006:105		
810 KAR 009:010			Amended	47 Ky.R. 1701	6-16-2021
Amended	48 Ky.R. 3050		900 KAR 006:110		
811 KAR 001:2502			Amended	47 Ky.R. 1702	
Repealed	47 Ky.R. 1923	2-25-2021	Am Comments	2419	
815 KAR 004:010			As Amended	2599	6-16-2021
Amended	48 Ky.R. 613	3-1-2022	900 KAR 006:115		
815 KAR 004:025			Amended	47 Ky.R. 1704	6-16-2021
Amended	48 Ky.R. 615		900 KAR 010:111	47 Ky.R. 2194	7-21-2021
As Amended	1762	3-1-2022	900 KAR 010:115	47 Ky.R. 2197	7-21-2021
815 KAR 004:027			900 KAR 010:120	47 Ky.R. 2203	
Amended	48 Ky.R. 617	3-1-2022	As Amended	48 Ky.R. 48	7-21-2021
815 KAR 007:080			900 KAR 010:125	47 Ky.R. 2211	
Amended	48 Ky.R. 618		As Amended	48 Ky.R. 54	7-21-2021
As Amended	1763	3-1-2022	900 KAR 010:130	47 Ky.R. 2214	
815 KAR 007:110			As Amended	48 Ky.R. 56	7-21-2021
Amended	48 Ky.R. 621		900 KAR 011:010		
As Amended	1765	3-1-2022	Repealed	47 Ky.R. 1325	6-16-2021
815 KAR 007:120			900 KAR 011:011	47 Ky.R. 1325	6-16-2021
Amended	48 Ky.R. 3053		900 KAR 012:005	48 Ky.R. 1079	
815 KAR 008:010			Am Comments	1782	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	2095		902 KAR 020:440		
As Amended	2225	2-10-2022	Amended	47 Ky.R. 1114	
900 KAR 013:010	48 Ky.R. 2348		Am Comments	1760	
900 KAR 014:010	48 Ky.R. 2662		As Amended	1989	6-16-2021
900 KAR 020:201	48 Ky.R. 2144		902 KAR 030:120		
902 KAR 002:020			Amended	48 Ky.R. 2635	
Amended	48 Ky.R. 1389		902 KAR 030:210	47 Ky.R. 2220	
As Amended IJC	2226	1-13-2022	As Amended	48 Ky.R. 60	7-21-2021
Amended	3063		902 KAR 045:160		
902 KAR 004:030			Amended	47 Ky.R. 1488	6-16-2021
Amended	48 Ky.R. 3071		902 KAR 045:190	47 Ky.R. 1157	
902 KAR 004:150	47 Ky.R. 2219		Am Comments	1767	
As Amended	48 Ky.R. 59	7-21-2021	As Amended	1995	
902 KAR 008:060			As Amended IJC	48 Ky.R. 60	6-16-2021
Amended	48 Ky.R. 3076		902 KAR 048:010		
902 KAR 008:100			Amended	48 Ky.R. 661	11-23-2021
Amended	48 Ky.R. 3079		902 KAR 048:020		
902 KAR 008:120			Amended	48 Ky.R. 665	11-23-2021
Amended	48 Ky.R. 3082		902 KAR 048:030		
902 KAR 010:010			Amended	48 Ky.R. 668	11-23-2021
Amended	47 Ky.R. 1283	6-16-2021	902 KAR 048:040		
902 KAR 010:140			Amended	48 Ky.R. 673	11-23-2021
Amended	48 Ky.R. 3088		902 KAR 95:040		
902 KAR 010:060			Amended	47 Ky.R. 1493	
Repealed	47 Ky.R. 1969	6-16-2021	As Amended	2599	6-16-2021
902 KAR 010:110			906 KAR 001:110		
Amended	47 Ky.R. 1285	6-16-2021	Amended	48 Ky.R. 2302	
902 KAR 010:120			Am Comments	3010	
Amended	48 Ky.R. 638		906 KAR 001:180		
Am Comments	1784		Amended	48 Ky.R. 1403	
As Amended	2419		As Amended	2232	2-10-2022
As Amended	2735		907 KAR 001:005		
902 KAR 010:121			Amended	48 Ky.R. 1409	3-10-2022
Amended	48 Ky.R. 1396		907 KAR 001:030		
Am Comments	2263		Amended	48 Ky.R. 1411	
As Amended	2756		As Amended	2096	1-13-2022
902 KAR 010:130			907 KAR 001:038		
Repealed	47 Ky.R. 1969	6-16-2021	Amended	47 Ky.R. 2483	
902 KAR 010:131(r)	47 Ky.R. 1326		As Amended	48 Ky.R. 374	8-26-2021
As Amended	1969	6-16-2021	907 KAR 001:082		
902 KAR 010:140			Amended	48 Ky.R. 3092	
Amended	47 Ky.R. 1288		907 KAR 001:104		
As Amended	1970	6-16-2021	Amended	48 Ky.R. 3105	
902 KAR 010:150			907 KAR 001:604		
Amended	47 Ky.R. 1292		Amended	48 Ky.R. 1414	1-13-2022
As Amended	1973	6-16-2021	907 KAR 003:005		
902 KAR 010:160			Amended	47 Ky.R. 1834	
Amended	47 Ky.R. 1295		Am Comments	48 Ky.R. 838	10-20-2021
As Amended	1975	6-16-2021	907 KAR 003:010		
902 KAR 010:170			Amended	47 Ky.R. 1839	
Amended	47 Ky.R. 1299		Am Comments	48 Ky.R. 89	
As Amended	1978	6-16-2021	As Amended	1174	10-20-2021
902 KAR 010:190			907 KAR 003:060	47 Ky.R. 2507	10-20-2021
Amended	48 Ky.R. 715		907 KAR 003:170		
Am Comments	1806		Amended	48 Ky.R. 1667	
As Amended	2440		Am Comments	2485	
902 KAR 020:016			As Amended	2598	
Amended	48 Ky.R. 2285		907 KAR 007:020	47 Ky.R. 1859	
Am Comments	2993		As Amended	2602	6-16-2021
902 KAR 020:018			907 KAR 010:815		
Amended	48 Ky.R. 2123		Amended	48 Ky.R. 1055	
902 KAR 020:081			Am Comments	1814	
Amended	48 Ky.R. 1399	2-10-2022	As Amended	2098	1-13-2022
902 KAR 020:106			907 KAR 010:830		
Amended	48 Ky.R. 2298		Amended	48 Ky.R. 1417	1-13-2022
Am Comments	3005		907 KAR 015:070		
902 KAR 020:160			Amended	47 Ky.R. 1121	
Amended	47 Ky.R. 1103		Am Comments	1769	
Am Comment	1749		As Amended	1996	6-16-2021
As Amended	1980	6-16-2021	907 KAR 015:080		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	47 Ky.R. 1127		Amended	48 Ky.R. 2306	
Am Comments	1776		Am Comments	3014	
As Amended	2001	6-16-2021	922 KAR 001:380		
907 KAR 017:005			Amended	47 Ky.R. 2759	
Amended	48 Ky.R. 1939		As Amended	48 Ky.R. 1579	11-23-2021
As Amended	2446	3-10-2022	922 KAR 001:390		
907 KAR 017:010			Amended	47 Ky.R. 2760	
Amended	48 Ky.R. 1942		Withdrawn		11-23-2021
As Amended	2448	3-10-2022	922 KAR 001:470		
907 KAR 020:001			Amended	48 Ky.R. 2128	
Amended	48 Ky.R. 1948		Am Comments	2775	
As Amended	2453	3-10-2022	As Amended	2987	
907 KAR 020:020			922 KAR 001:490		
Amended	48 Ky.R. 1953		Amended	47 Ky.R. 1844	
As Amended	2457	3-10-2022	Am Comments	48 Ky.R. 94	
907 KAR 023:020			As Amended	377	8-26-2021
Amended	48 Ky.R. 678		922 KAR 001:530		
Am Comments	1818		Amended	48 Ky.R. 2313	
908 KAR 001:390	47 Ky.R. 2222		922 KAR 001:540		
Am Comments	48 Ky.R. 441	9-22-2021	Amended	47 Ky.R. 1849	
908 KAR 002:270	47 Ky.R. 1328		As Amended	2603	6-16-2021
As Amended	2011	6-16-2021	922 KAR 001:565		
908 KAR 003:010			Amended	48 Ky.R. 1426	1-13-2022
Amended	48 Ky.R. 2639		922 KAR 001:580		
910 KAR 001:190			Amended	47 Ky.R. 1851	
Amended	48 Ky.R. 1956		As Amended	2604	6-16-2021
Am Comments	2490		922 KAR 002:120		
910 KAR 004:010	48 Ky.R. 1442		Amended	47 Ky.R. 1145	
As Amended	2237	2-10-2022	Am Comments	1787	6-16-2021
921 KAR 001:020			922 KAR 002:160		
Amended	48 Ky.R. 209		Amended	48 Ky.R. 693	
As Amended	1178	10-20-2021	Am Comments	1614	12-15-2021
921 KAR 001:390			922 KAR 001:290	48 Ky.R. 3142	
Amended	48 Ky.R. 212		922 KAR 002:230		
As Amended	1179	10-20-2021	Amended	47 Ky.R. 1303	6-16-2021
921 KAR 001:400			922 KAR 002:240		
Amended	48 Ky.R. 681		Amended	47 Ky.R. 1304	6-16-2021
As Amended	1563	11-23-2021	922 KAR 002:250		
921 KAR 002:015			Amended	47 Ky.R. 1310	6-16-2021
Amended	48 Ky.R. 684		922 KAR 002:280		
As Amended	1564	11-23-2021	Amended	48 Ky.R. 2316	
921 KAR 003:027	48 Ky.R. 236		As Amended	2988	
921 KAR 003:010			922 KAR 002:300	47 Ky.R. 2509	
Amended	47 Ky.R. 1497	6-16-2021	As Amended	48 Ky.R. 380	8-26-2021
921 KAR 003:025			922 KAR 005:020		
Amended	47 Ky.R. 1706		Amended	47 Ky.R. 2486	
As Amended	2398	8-3-2021	As Amended	48 Ky.R. 382	8-26-2021
921 KAR 003:035			922 KAR 005:070		
Amended	47 Ky.R. 591		Amended	48 Ky.R. 2311	
Am Comments	1416		Am Comments	3021	
As Amended	1594		923 KAR 002:470		
As Amended	2401	7-21-2021	Amended	48 Ky.R. 1059	
921 KAR 003:045			As Amended	1771	12-15-2021
Amended	47 Ky.R. 1499	6-16-2021			
921 KAR 003:060					
Amended	47 Ky.R. 2746				
Am Comments	48 Ky.R. 1188	11-23-2021			
921 KAR 004:116					
Amended	48 Ky.R. 689	11-23-2021			
9221 KAR 004:122	48 Ky.R. 2146				
922 KAR 001:300					
Amended	47 Ky.R. 2749				
Am Comments	48 Ky.R. 1191				
As Amended	1569	11-23-2021			
922 KAR 001:310					
Amended	48 Ky.R. 2642				
922 KAR 001:315	48 Ky.R. 2665				
922 KAR 001:340					
Amended	48 Ky.R. 2656				
922 KAR 001:360					

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
2.015	922 KAR 001:310		503 KAR 001:140
	922 KAR 001:340	15.383	502 KAR 013:010
	922 KAR 001:565	15.384	503 KAR 001:060
11.065	800 KAR 001:020E		503 KAR 001:140
11.160	502 KAR 030:060	15.386	503 KAR 001:060
11A.010	009 KAR 001:070		503 KAR 001:110
11A.047	009 KAR 001:070	15.388	503 KAR 001:060
12.270	800 KAR 001:020E	15.390	503 KAR 001:060
12.355	201 KAR 022:045	15.391	503 KAR 001:060
13A.010	902 KAR 010:190	15.392	503 KAR 001:060
13A.310	921 KAR 003:026E		503 KAR 001:140
13B	016 KAR 001:030	15.394	503 KAR 001:060
	101 KAR 001:365		503 KAR 001:140
	501 KAR 003:150	15.396	503 KAR 001:060
	725 KAR 002:015		503 KAR 001:140
	782 KAR 001:010	15.3971	503 KAR 001:060
	791 KAR 001:030		503 KAR 001:140
	810 KAR 005:070	15.3973	503 KAR 001:060
	902 KAR 010:120	15.3975	503 KAR 001:060
	902 KAR 010:190	15.3977	503 KAR 001:060
	902 KAR 020:081	15.3979	503 KAR 001:060
	906 KAR 001:180	15.398	503 KAR 001:060
	907 KAR 017:005	15.400	503 KAR 001:060
	907 KAR 017:010		503 KAR 001:140
	921 KAR 004:122E	15.402	503 KAR 001:060
	921 KAR 004:122	15.404	503 KAR 001:060
	922 KAR 005:070		503 KAR 001:110
13B.050	201 KAR 002:430		503 KAR 001:120
13B.125	201 KAR 002:430	15.410	503 KAR 005:080
13B.140	907 KAR 010:815	15.420	105 KAR 001:390
	907 KAR 010:830	15.430	503 KAR 001:060
13.310	030 KAR 006:011E	15.440	503 KAR 001:090
	030 KAR 006:011		503 KAR 001:110
14.300	030 KAR 006:011E		503 KAR 001:440
	030 KAR 006:011		503 KAR 001:140
14.302	030 KAR 006:011E		503 KAR 003:020
	030 KAR 006:011	15.450	503 KAR 001:060
14.304	030 KAR 006:011E	15.460	503 KAR 005:100
	030 KAR 006:011	15.470	503 KAR 005:100
14.306	030 KAR 006:011E	15.490	503 KAR 005:100
	030 KAR 006:011	15.500	503 KAR 005:100
14A.1-070	030 KAR 001:011	15.510	503 KAR 005:080
14A.2-010	030 KAR 001:011	15.530	503 KAR 003:050
14A.2-060	030 KAR 001:011	15.540	502 KAR 030:060
14A.2-130	030 KAR 001:011		503 KAR 001:140
14A.2-140	030 KAR 001:011	15.550	503 KAR 003:050
14A.2-160	030 KAR 001:011	15.560	503 KAR 003:050
14A.3-010	030 KAR 001:011	15.565	503 KAR 001:140
15.247	040 KAR 006:010		503 KAR 003:050
15.310	503 KAR 001:060	15.580	503 KAR 001:140
15.315	503 KAR 001:060	15.900	040 KAR 006:020
15.320	503 KAR 001:060	15.905	101 KAR 006:020E
15.325	503 KAR 001:060		101 KAR 006:020
15.330	503 KAR 001:060	15.920	040 KAR 006:020
	503 KAR 001:080	15.935	040 KAR 006:020
	503 KAR 001:090		101 KAR 006:020E
	503 KAR 001:100		101 KAR 006:020
	503 KAR 001:110	15A.070	503 KAR 003:020
	503 KAR 001:120	15A.160	502 KAR 012:010
	503 KAR 001:140		502 KAR 030:010
	503 KAR 001:170	16.010	105 KAR 001:390
15.334	503 KAR 001:060	16.040	502 KAR 045:005
15.335	503 KAR 001:060		502 KAR 045:015
15.340	503 KAR 001:060		502 KAR 045:035
	503 KAR 003:030		502 KAR 045:085
15.350	503 KAR 001:060		502 KAR 045:150
15.360	503 KAR 001:060	16.050	502 KAR 045:005
15.367	503 KAR 001:060		502 KAR 045:015
15.380	503 KAR 001:060		502 KAR 045:035
	503 KAR 001:140		502 KAR 045:045
15.382	503 KAR 001:060		502 KAR 045:075

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	502 KAR 045:105		101 KAR 001:400
	502 KAR 045:115	18A.095	101 KAR 001:345
16.060	502 KAR 040:010		101 KAR 001:365
16.080	502 KAR 045:015		101 KAR 001:367
	502 KAR 045:035		101 KAR 002:102
	502 KAR 045:045		803 KAR 005:005
16.132	502 KAR 012:010		900 KAR 001:050
16.140	502 KAR 050:010	18A.110	101 KAR 002:046
16.505	105 KAR 001:390		101 KAR 002:066
16.505-16.652	105 KAR 001:210		101 KAR 002:095E
16.545	105 KAR 001:330		101 KAR 002:095
16.645	105 KAR 001:330		101 KAR 002:102
	105 KAR 001:310		101 KAR 002:190
17.110	502 KAR 030:020		101 KAR 003:015
	502 KAR 040:010	18A.111	101 KAR 001:325
17.115	502 KAR 030:020	18A.113	101 KAR 002:066
	502 KAR 030:060	18A.115	101 KAR 001:400
17.140	502 KAR 030:010	18A.120	101 KAR 002:046
	502 KAR 030:050	18A.135	101 KAR 002:066
	502 KAR 030:060	18A.140	101 KAR 002:102
	502 KAR 030:070		101 KAR 003:015
17.147	502 KAR 030:060	18A.145	101 KAR 002:102
17.150	502 KAR 030:030		101 KAR 003:015
	502 KAR 030:070	18A.150	101 KAR 002:046
17.151	502 KAR 030:060	18A.165	101 KAR 002:066
17.152	502 KAR 030:060	18A.195	101 KAR 002:102
17.160	502 KAR 030:060		101 KAR 003:015
17.165	922 KAR 001:290	18A.225	101 KAR 002:210E
	922 KAR 001:310		101 KAR 002:210
	922 KAR 001:470	18A.2254	101 KAR 002:210E
	922 KAR 002:280		101 KAR 002:210
17.167	502 KAR 030:060	18A.990	101 KAR 002:102
17.180	502 KAR 014:010		101 KAR 003:015
17.450	502 KAR 035:010	36.450	201 KAR 006:040
	502 KAR 035:020	39A.180	201 KAR 002:411E
	502 KAR 035:030		201 KAR 002:412E
	502 KAR 035:040		800 KAR 001:020E
	502 KAR 035:050	39A.350-39A.366	902 KAR 002:230E
17.460	502 KAR 035:010	39F.180	603 KAR 005:360
	502 KAR 035:020	39F.200	603 KAR 005:360
	502 KAR 035:030	41.400	040 KAR 006:020
	502 KAR 035:040		101 KAR 006:020E
	502 KAR 035:050		101 KAR 006:020
17.500	922 KAR 001:310	42.019	200 KAR 003:020E
17.500-17.540	502 KAR 031:020		200 KAR 003:020
17.500-17.580	922 KAR 001:290	42.425	200 KAR 003:020E
	922 KAR 002:280		200 KAR 003:020
17.550-17.991	501 KAR 006:190	45.031	200 KAR 017:110E
18A.005	101 KAR 001:325		200 KAR 017:110
	101 KAR 002:190	45.237-45.241	922 KAR 001:565
18A.020	101 KAR 001:345	45.357	921 KAR 004:116E
	101 KAR 002:102		921 KAR 004:116
18A.030	101 KAR 003:015	45A	603 KAR 004:035
	101 KAR 002:046		910 KAR 001:190
	101 KAR 002:066		921 KAR 001:020
	101 KAR 002:095E	49	502 KAR 012:010
	101 KAR 002:095	56.010	200 KAR 003:020E
	101 KAR 002:102		200 KAR 003:020
	101 KAR 002:210E	56.463	200 KAR 003:020E
	101 KAR 002:210		200 KAR 003:020
18A.032	101 KAR 003:015	61.365	502 KAR 013:010
18A.075	101 KAR 002:046	61.371-61.379	101 KAR 001:395
	101 KAR 001:335	61.373	101 KAR 002:102
	101 KAR 001:345		101 KAR 003:015
	101 KAR 001:365	61.394	101 KAR 002:102
	101 KAR 001:367		101 KAR 003:015
	101 KAR 001:375	61.505	105 KAR 001:330
	101 KAR 001:400		105 KAR 001:390
18A.0751	101 KAR 001:325	61.505-61.705	105 KAR 001:210
	101 KAR 001:335		105 KAR 001:310
	101 KAR 001:345	61.510	105 KAR 001:390
	101 KAR 001:365		105 KAR 001:450E
	101 KAR 001:367		105 KAR 001:450
	101 KAR 001:375	61.543	105 KAR 001:330

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	105 KAR 001:450E		031 KAR 005:011E
	105 KAR 001:450		031 KAR 005:011
61.552	105 KAR 001:330	117.085	031 KAR 004:131E
	105 KAR 001:450E		031 KAR 004:131
	105 KAR 001:450		031 KAR 004:141E
61.565	105 KAR 001:390		031 KAR 004:141
61.590	105 KAR 001:390		031 KAR 005:025E
61.5991	105 KAR 001:450E		031 KAR 005:025
	105 KAR 001:450		031 KAR 005:026E
61.592	105 KAR 001:330		031 KAR 005:026
61.637	105 KAR 001:390	117.086	031 KAR 004:131E
61.645	105 KAR 001:450E		031 KAR 004:131
	105 KAR 001:450		031 KAR 005:011E
61.675	105 KAR 001:390		031 KAR 005:011
	105 KAR 001:450E		031 KAR 005:025E
	105 KAR 001:450		031 KAR 005:025
61.685	105 KAR 001:330		031 KAR 005:026E
	105 KAR 001:450E		031 KAR 005:026
	105 KAR 001:450	117.087	031 KAR 005:025E
61.702	105 KAR 001:390		031 KAR 005:025
61.805-61.850	702 KAR 007:065		031 KAR 005:026E
61.870	725 KAR 001:020		031 KAR 005:026
61.870-61.884	302 KAR 050:021	117.145	031 KAR 005:025E
	302 KAR 050:031		031 KAR 005:025
	782 KAR 001:010		031 KAR 005:026E
	791 KAR 001:155		031 KAR 005:026
61.872	502 KAR 030:070	117.225	031 KAR 005:025E
	922 KAR 005:070		031 KAR 005:025
61.874	201 KAR 020:240		031 KAR 005:026E
61.876	040 KAR 001:040E		031 KAR 005:026
	040 KAR 001:040	117.228	031 KAR 005:025E
	922 KAR 001:470		031 KAR 005:025
61.878	201 KAR 020:085		031 KAR 005:026E
	502 KAR 030:070		031 KAR 005:026
	725 KAR 001:025	117.235	031 KAR 004:170
	791 KAR 001:155	117.305	031 KAR 004:071E
61.884	502 KAR 030:070		031 KAR 004:071
67A	815 KAR 007:110	117.383	F031 KAR 004:210E
67C	815 KAR 007:110		031 KAR 004:210
70.290-70.293	105 KAR 001:390	117A.010	031 KAR 003:031E
72.020	502 KAR 012:010		031 KAR 003:031
72.025	501 KAR 007:090	117A.030	031 KAR 004:131E
72.210-72.280	500 KAR 012:010		031 KAR 004:131
75.400	739 KAR 002:060		031 KAR 004:141E
78.510	105 KAR 001:390		031 KAR 004:141
78.510-78.852	105 KAR 001:210	117A.040	031 KAR 003:031E
	105 KAR 001:310		031 KAR 003:031
78.545	105 KAR 001:330	117A.050	031 KAR 004:141E
	105 KAR 001:390		031 KAR 004:141
	105 KAR 001:330		031 KAR 005:011E
78.5520	105 KAR 001:390		031 KAR 005:011
78.5540	105 KAR 001:390		031 KAR 004:141E
78.610	105 KAR 001:330	117A.060	031 KAR 004:141E
78.625	105 KAR 001:390		031 KAR 004:141
78.635	105 KAR 001:390		031 KAR 005:011E
82.105	815 KAR 007:110		031 KAR 005:011
83	815 KAR 007:110	117A.080	031 KAR 004:131E
83A	815 KAR 007:110		031 KAR 004:131
95.010	739 KAR 002:060	117A.100	031 KAR 005:011E
95.022	105 KAR 001:390		031 KAR 005:011
95A.040	739 KAR 002:060	117A.120	031 KAR 004:131E
95A.210	739 KAR 002:060		031 KAR 004:131
116.045	031 KAR 004:141E	117A.130	031 KAR 004:131E
	031 KAR 004:141		031 KAR 004:131
117.001	031 KAR 005:025E		031 KAR 005:011E
	031 KAR 005:025		031 KAR 005:011
	031 KAR 005:026E	117A.160	031 KAR 005:011E
	031 KAR 005:026		031 KAR 005:011
117.015	031 KAR 004:195	118.035	101 KAR 002:102
	031 KAR 004:170		101 KAR 003:015
117.066	031 KAR 004:195E	118.105	030 KAR 002:010
	031 KAR 004:196E	118.425	031 KAR 004:071E
	031 KAR 004:196		031 KAR 004:071
117.079	031 KAR 004:141E	120.205	031 KAR 004:200E
	031 KAR 004:141		031 KAR 004:200

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	031 KAR 004:201E	141.120	103 KAR 016:270
	031 KAR 004:201		103 KAR 016:352
120.215	031 KAR 004:200E	141.121	103 KAR 016:270
	031 KAR 004:201E	141.160	103 KAR 016:352
131.130	031 KAR 004:201	141.170	103 KAR 016:352
	103 KAR 016:352	141.206	103 KAR 016:270
	103 KAR 018:090		103 KAR 016:352
131.570	787 KAR 001:110	141.210	103 KAR 016:352
132.010	815 KAR 007:120	141.310	103 KAR 018:090
136.120	103 KAR 008:090	141.315	103 KAR 018:090
	103 KAR 008:090	141.325	103 KAR 018:090
139.010	103 KAR 027:050	141.330	103 KAR 018:020
	103 KAR 027:150	141.355	103 KAR 018:020
	103 KAR 027:230	141.420	725 KAR 001:020
	103 KAR 030:091	141.990	103 KAR 016:352
	103 KAR 030:120	142.303	907 KAR 010:830
	103 KAR 030:140	150.010	301 KAR 001:050
	103 KAR 030:190		301 KAR 001:125
	103 KAR 030:250		301 KAR 001:140
139.105	103 KAR 027:050		301 KAR 001:152
	103 KAR 030:190		301 KAR 001:120
139.200	103 KAR 027:050		301 KAR 001:201
	103 KAR 027:150		301 KAR 001:410
	103 KAR 027:230		301 KAR 002:041
	103 KAR 030:250		301 KAR 002:050
139.215	103 KAR 027:150		301 KAR 002:082
	103 KAR 027:230		301 KAR 002:132
139.240	103 KAR 027:230		301 KAR 002:172
139.250	103 KAR 027:230		301 KAR 002:221
139.260	103 KAR 027:150		301 KAR 002:224
	103 KAR 027:230		301 KAR 003:012
	103 KAR 030:091		301 KAR 003:030
	103 KAR 030:190		301 KAR 004:010
	103 KAR 030:250		301 KAR 004:020
139.270	103 KAR 027:150		301 KAR 004:050
	103 KAR 027:230		301 KAR 004:070
	103 KAR 030:250		301 KAR 004:091
139.280	103 KAR 027:150	150.015	301 KAR 002:015
	103 KAR 027:230		301 KAR 002:082
	103 KAR 030:250		301 KAR 002:260
139.290	103 KAR 027:150		301 KAR 004:050
	103 KAR 027:230	150.022	301 KAR 004:001
	103 KAR 030:250		301 KAR 004:010
139.310	103 KAR 027:050	150.023	301 KAR 004:001
	103 KAR 027:150	150.025	301 KAR 001:019
	103 KAR 027:230		301 KAR 001:031
	103 KAR 030:250		301 KAR 002:050
139.330	103 KAR 027:050		301 KAR 002:111
	103 KAR 027:150		301 KAR 002:221
	103 KAR 027:230		301 KAR 002:224
	103 KAR 030:250		301 KAR 002:230
139.340	103 KAR 030:190		301 KAR 003:010
139.470	103 KAR 027:230		301 KAR 003:026
	103 KAR 030:091		301 KAR 003:030
	103 KAR 030:190		301 KAR 004:010
	103 KAR 030:250		301 KAR 004:020
139.480	103 KAR 027:230		301 KAR 004:110
	103 KAR 030:091	150.090	301 KAR 001:012
	103 KAR 030:120		301 KAR 001:016
	103 KAR 030:140		301 KAR 001:031
	103 KAR 030:250		301 KAR 005:030
139.486	103 KAR 030:190	150.105	301 KAR 002:260
139.531	810 KAR 005:030	150.170	301 KAR 001:031
141.010	103 KAR 016:270		301 KAR 001:050
	103 KAR 016:352		301 KAR 001:125
141.0101	103 KAR 016:352		301 KAR 001:152
141.012	103 KAR 016:352		301 KAR 001:201
141.039	103 KAR 016:320		301 KAR 001:410
	103 KAR 016:352		301 KAR 002:041
141.040	103 KAR 016:270		301 KAR 002:050
	103 KAR 016:352		301 KAR 002:111
141.044	103 KAR 016:352		301 KAR 002:132
141.050	103 KAR 016:320		301 KAR 002:230
	103 KAR 018:090		301 KAR 002:260

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	301 KAR 003:026		301 KAR 003:110
	301 KAR 003:110	150.411	301 KAR 002:172
	301 KAR 005:030		301 KAR 004:091
150.175	301 KAR 004:070	150.445	301 KAR 001:152
	301 KAR 001:031		301 KAR 001:410
	301 KAR 001:050	150.450	301 KAR 001:140
	301 KAR 001:082		301 KAR 001:152
	301 KAR 001:120	150.470	301 KAR 001:031
	301 KAR 001:152	150.485	301 KAR 001:120
	301 KAR 001:201		301 KAR 001:125
	301 KAR 001:410	150.600	301 KAR 002:224
	301 KAR 002:142		301 KAR 002:260
	301 KAR 002:230		301 KAR 004:020
	301 KAR 002:260		301 KAR 004:050
	301 KAR 003:026	150.620	301 KAR 001:012
	301 KAR 003:110		301 KAR 001:018
	301 KAR 005:030		301 KAR 001:019
150.177	301 KAR 002:172		301 KAR 001:050
150.180	301 KAR 002:041		301 KAR 001:201
	301 KAR 002:132		301 KAR 001:410
	301 KAR 002:172		301 KAR 003:010
	301 KAR 004:070		301 KAR 003:012
	301 KAR 004:091		301 KAR 003:026
150.183	301 KAR 002:082		301 KAR 003:027
150.186	301 KAR 002:082		301 KAR 004:100
150.190	301 KAR 001:120	150.625	301 KAR 001:012
150.195	301 KAR 002:082		301 KAR 001:016
	301 KAR 004:070		301 KAR 001:019
	301 KAR 005:001	150.630	301 KAR 002:041
	301 KAR 005:030		301 KAR 002:260
150.235	301 KAR 001:120	150.640	301 KAR 001:012
	301 KAR 001:125		301 KAR 001:016
	301 KAR 001:410		301 KAR 001:019
	301 KAR 002:082		301 KAR 002:050
	301 KAR 002:260		301 KAR 003:010
	301 KAR 005:030		301 KAR 003:012
150.236	301 KAR 005:100	150.680	301 KAR 002:050
150.240	301 KAR 003:012	150.990	301 KAR 001:050
150.250	301 KAR 001:031		301 KAR 001:152
	301 KAR 002:050		301 KAR 001:201
	301 KAR 004:100		301 KAR 001:410
150.280	301 KAR 002:041		301 KAR 002:041
	301 KAR 002:084		301 KAR 002:082
150.290	301 KAR 002:084		301 KAR 002:132
150.300	301 KAR 004:020		301 KAR 002:142
150.305	301 KAR 002:142		301 KAR 002:172
	301 KAR 002:221		301 KAR 002:221
	301 KAR 002:224		301 KAR 002:224
150.320	301 KAR 002:082		301 KAR 002:260
150.330	301 KAR 002:082		301 KAR 003:012
	301 KAR 002:221		301 KAR 003:030
	301 KAR 002:224		301 KAR 003:110
	301 KAR 002:230		301 KAR 004:070
	301 KAR 002:260		301 KAR 004:100
150.340	301 KAR 001:031		301 KAR 005:030
	301 KAR 001:050	151.601	200 KAR 017:110E
	301 KAR 001:201		200 KAR 017:110
	301 KAR 002:221	151.605	200 KAR 017:110E
	301 KAR 002:224		200 KAR 017:110
	301 KAR 002:260	151B.020	787 KAR 002:040
150.360	301 KAR 001:031	151B.185	781 KAR 001:020
	301 KAR 001:082	151B.190	781 KAR 001:010
	301 KAR 002:050		781 KAR 001:020
	301 KAR 003:027		781 KAR 001:030
	301 KAR 003:030		781 KAR 001:040
	301 KAR 003:110		781 KAR 001:050
150.362	301 KAR 003:110	151B.200	781 KAR 001:010
150.365	301 KAR 003:110		781 KAR 001:020
150.370	301 KAR 001:031	151B.280	787 KAR 003:020
	301 KAR 002:111	151B.402	013 KAR 003:040
	301 KAR 003:030	151B.403	013 KAR 003:010
	301 KAR 003:110		013 KAR 003:030
150.390	301 KAR 002:111		013 KAR 003:050
	301 KAR 003:027		013 KAR 003:060

KRS SECTION	REGULATION	KRS SECTION	REGULATION
151B.408	013 KAR 003:020		922 KAR 001:470
	013 KAR 003:030	160.445	702 KAR 007:065
	013 KAR 003:040	160.570	702 KAR 003:090
	013 KAR 003:060	160.613	103 KAR 030:140
154A.060	202 KAR 003:020	160.730	702 KAR 001:140
154A.120	202 KAR 003:020	161.010-161.100	016 KAR 001:030
154A.130	011 KAR 015:090	161.011	013 KAR 003:030
156.010	011 KAR 015:090	161.020	016 KAR 002:040
	702 KAR 003:090		016 KAR 002:050
156.029	701 KAR 005:160		016 KAR 002:180
156.070	702 KAR 001:191E		016 KAR 002:220E
	702 KAR 001:192E		016 KAR 002:220
	702 KAR 001:195E		016 KAR 002:230E
	702 KAR 007:065		016 KAR 002:230
	704 KAR 003:395		016 KAR 002:180
	704 KAR 019:002		016 KAR 003:070
156.160	702 KAR 001:191E		016 KAR 003:080
	701 KAR 001:191		016 KAR 004:020
	702 KAR 001:192E		016 KAR 004:050
	704 KAR 007:170		016 KAR 005:010
	704 KAR 019:002		016 KAR 006:010
156.496	922 KAR 001:565	161.027	016 KAR 003:080
156.802	780 KAR 003:020	161.028	016 KAR 002:050
156.808	780 KAR 003:020		016 KAR 002:220E
157.200	016 KAR 004:020		016 KAR 002:220
157.250	016 KAR 004:020		016 KAR 002:230E
157.3175	016 KAR 002:040		016 KAR 002:230
157.320	702 KAR 007:125E		016 KAR 003:070
	702 KAR 007:125		016 KAR 003:080
157.350	702 KAR 007:125E		016 KAR 004:020
	702 KAR 007:125		016 KAR 004:050
157.360	702 KAR 007:125E		016 KAR 005:010
	702 KAR 007:125		016 KAR 006:010
158.007	011 KAR 015:090	161.030	016 KAR 002:040
158.030	702 KAR 007:125E		016 KAR 002:050
	702 KAR 007:125		016 KAR 002:180
158.070	702 KAR 007:125E		016 KAR 002:220E
	702 KAR 007:125		016 KAR 002:220
	704 KAR 003:395		016 KAR 002:230E
158.100	702 KAR 007:125E		016 KAR 002:230
	702 KAR 007:125		016 KAR 003:070
158.135	013 KAR 003:050		016 KAR 003:080
	922 KAR 001:310		016 KAR 004:020
158.143	013 KAR 003:050		016 KAR 004:050
158.160	902 KAR 002:221E		016 KAR 005:010
158.240	702 KAR 007:125E		016 KAR 006:010
	702 KAR 007:125	161.053	016 KAR 002:050
158.441	105 KAR 001:390	161.120	016 KAR 001:030
158.6451	704 KAR 003:395	161.1211	016 KAR 002:180
	704 KAR 007:170	161.155	702 KAR 001:191
158.6453	704 KAR 003:395	161.200	702 KAR 007:125E
158.6645	013 KAR 003:050		702 KAR 007:125
158.792	704 KAR 003:395	161.605	780 KAR 003:020
159.010	702 KAR 007:125E	161.661	102 KAR 001:360E
	702 KAR 007:125	163.470	782 KAR 001:010
159.030	702 KAR 007:125E	164.002	011 KAR 015:090
	702 KAR 007:125	164.518	011 KAR 004:080
	704 KAR 007:121		011 KAR 016:001
159.035	702 KAR 007:125E		011 KAR 016:010
	702 KAR 007:125		011 KAR 016:020
159.140	702 KAR 007:125E	164.740	011 KAR 016:001
	702 KAR 007:125	164.744	011 KAR 004:080
159.170	702 KAR 007:125E		011 KAR 005:145
	702 KAR 007:125	164.748	011 KAR 004:080
160.151	922 KAR 001:470	164.753	011 KAR 004:080
160.180	702 KAR 001:116		011 KAR 005:145
160.290	702 KAR 001:191E	164.7535	011 KAR 004:080
	702 KAR 001:191		011 KAR 005:145
	702 KAR 001:192E	164.769	011 KAR 004:080
	702 KAR 007:150	164.772	201 KAR 022:020
	704 KAR 007:121	164.780	011 KAR 004:080
160.380	016 KAR 001:030	164.785	011 KAR 004:080
	702 KAR 007:065	164.786	011 KAR 022:010
	704 KAR 019:002	164.7870	011 KAR 023:010

KRS SECTION	REGULATION	KRS SECTION	REGULATION
164.7871	011 KAR 015:090	165A.500	791 KAR 001:080
164.7874	011 KAR 015:090	165A.510	791 KAR 001:080
164.7877	011 KAR 015:090		791 KAR 001:100
164.7879	011 KAR 015:090	165A.990	791 KAR 001:030
164.7881	011 KAR 015:090	171	725 KAR 001:010
164.7885	011 KAR 015:090		725 KAR 001:050
164.7889	011 KAR 005:145	171.027	725 KAR 002:015
	011 KAR 015:090	171.125	725 KAR 002:015
164.7890	011 KAR 004:080	171.221	725 KAR 002:080
164.7894	011 KAR 004:080	171.396	300 KAR 006:010
164.945	016 KAR 005:010		300 KAR 006:011E
164.946	016 KAR 005:010		300 KAR 006:011
164.947	016 KAR 005:010	171.3961	300 KAR 006:010
164.952	105 KAR 001:390		300 KAR 006:011E
164A.575	745 KAR 001:035		300 KAR 006:011
165A.310	502 KAR 010:035	171.3963	300 KAR 006:011E
	791 KAR 001:020		300 KAR 006:011
165A.330	791 KAR 001:070	171.397	300 KAR 006:010
	791 KAR 001:010		300 KAR 006:011E
	791 KAR 001:020		300 KAR 006:011
	791 KAR 001:040	171.420	725 KAR 001:025
	791 KAR 001:050		725 KAR 001:061
	791 KAR 001:060	171.450	725 KAR 001:020
	791 KAR 001:070		725 KAR 001:030
	791 KAR 001:080		725 KAR 001:061
	791 KAR 001:100	171.470	725 KAR 001:025
165A.340	791 KAR 001:020	171.480	725 KAR 001:025
	791 KAR 001:155	171.500	725 KAR 001:025
165A.350	791 KAR 001:010		725 KAR 001:025
	791 KAR 001:020	171.520	725 KAR 001:040
	791 KAR 001:025	171.550	725 KAR 001:025
	791 KAR 001:030	171.580	725 KAR 001:025
	791 KAR 001:070	171.590	725 KAR 001:025
165A.360	791 KAR 001:150	171.600	725 KAR 001:020
	791 KAR 001:010	171.670	725 KAR 001:020
	791 KAR 001:020	173.040	725 KAR 002:015
	791 KAR 001:025	173.340	725 KAR 002:015
	791 KAR 001:030	173.480	725 KAR 002:015
	791 KAR 001:150	173.725	725 KAR 002:015
165A.370	791 KAR 001:160	176.050	603 KAR 005:150
	791 KAR 001:020	176.051	603 KAR 003:100
	791 KAR 001:027	177.047	603 KAR 005:150
	791 KAR 001:030	177.0734-177.0738	603 KAR 004:035
	791 KAR 001:040	177.103	603 KAR 005:150
	791 KAR 001:050	177.106	603 KAR 005:150
	791 KAR 001:060	177.572-177.576	603 KAR 010:011E
	791 KAR 001:070		603 KAR 010:040E
	791 KAR 001:080		603 KAR 010:040
	791 KAR 001:100	177.830-177.890	603 KAR 010:011E
	791 KAR 001:155		603 KAR 010:040E
	791 KAR 001:160		603 KAR 010:040
165A.380	791 KAR 001:025	177.990	603 KAR 010:011E
	791 KAR 001:070		603 KAR 010:040E
165A.390	791 KAR 001:020		603 KAR 010:040
	791 KAR 001:030	186.021	806 KAR 039:070
	791 KAR 001:155	186.412	502 KAR 013:010
165A.420	791 KAR 001:025		502 KAR 013:040
165A.450	791 KAR 001:020	186.480	782 KAR 001:070
	791 KAR 001:035	186.570	921 KAR 001:390
	791 KAR 001:050	186.576	782 KAR 001:070
165A.460	502 KAR 010:070	186.577	782 KAR 001:070
	502 KAR 010:090	186.578	782 KAR 001:070
	791 KAR 001:040	186.579	782 KAR 001:070
	791 KAR 001:070	186A.040	806 KAR 039:070
165A.460-165A.515	791 KAR 001:060	186A.042	806 KAR 039:070
165A.465	791 KAR 001:050	186A.095	806 KAR 039:070
	791 KAR 001:070	189.125	922 KAR 001:310
165A.470	791 KAR 001:050	189.450	502 KAR 015:020
	791 KAR 001:070	189.635	502 KAR 015:010
165A.475	791 KAR 001:050	189.751	502 KAR 015:020
	791 KAR 001:070	189.752	502 KAR 015:020
165A.480	791 KAR 001:050	189.753	502 KAR 015:020
	791 KAR 001:070	189.910-189.950	202 KAR 007:560E
165A.485	791 KAR 001:070		202 KAR 007:560

KRS SECTION	REGULATION	KRS SECTION	REGULATION
189A.010	782 KAR 001:070		815 KAR 004:027
190.010	605 KAR 001:051	198B.400-198B.0540	815 KAR 004:025
	605 KAR 001:211	198B.470	815 KAR 004:010
190.010-190.990	605 KAR 001:191	198B.480	815 KAR 004:010
190.030	605 KAR 001:051	198B.490	815 KAR 004:027
	605 KAR 001:071	198B.500	815 KAR 004:010
190.032	605 KAR 001:211	198B.510	815 KAR 004:010
190.040	605 KAR 001:091	198B.540	815 KAR 004:010
190.058	605 KAR 001:131	198B.550-198B.630	815 KAR 007:080
190.062	605 KAR 001:131	198B.650	815 KAR 008:010
194.010	921 KAR 004:116E	198B.654	815 KAR 008:010
	921 KAR 004:116	198B.656	815 KAR 008:010
194.025	907 KAR 017:010	198B.658	815 KAR 008:010
194.030	787 KAR 001:310	198B.659	815 KAR 008:010
194.060	921 KAR 004:116E	198B.660	815 KAR 008:010
	921 KAR 004:116	198B.664	815 KAR 008:010
	922 KAR 002:160E	198B.668	815 KAR 008:010
	922 KAR 002:160	198B.672	815 KAR 008:010
194.070	921 KAR 004:116E	198B.676	815 KAR 008:010
	921 KAR 004:116	198B.990	815 KAR 007:120
194A	921 KAR 002:015E	199.011	922 KAR 001:290
	921 KAR 002:015		922 KAR 001:310
194A.005	900 KAR 001:050		922 KAR 001:315
	907 KAR 020:001		922 KAR 001:340
	922 KAR 001:565		922 KAR 001:360E
194A.010	922 KAR 005:070		922 KAR 001:360
194A.025	907 KAR 017:005		922 KAR 001:530
194A.050	900 KAR 010:201		922 KAR 001:565
	902 KAR 002:230E		922 KAR 002:280
	902 KAR 002:240E	199.430	922 KAR 001:310
	902 KAR 002:250E	199.462	922 KAR 001:565
	902 KAR 004:030	199.466	922 KAR 001:470
194A.060	907 KAR 003:170		922 KAR 002:280
	910 KAR 001:190	199.470	922 KAR 001:315
	922 KAR 001:310	199.470-199.590	922 KAR 001:565
	922 KAR 001:315	199.510	922 KAR 001:315
194A.062	900 KAR 001:050	199.520	922 KAR 001:315
194A.065	900 KAR 001:050	199.555	907 KAR 017:005
194A.070	921 KAR 004:122E	199.570	922 KAR 001:310
	921 KAR 004:122	199.572	922 KAR 001:315
194A.380-194A.383	922 KAR 001:470	199.640	922 KAR 001:310
194A.540	201 KAR 020:070E		922 KAR 001:315
	201 KAR 020:070	199.640-199.680	922 KAR 001:360E
	201 KAR 020:110		922 KAR 001:360
	201 KAR 020:320	199.642	922 KAR 001:290
194A.700	900 KAR 014:010E	199.801	922 KAR 001:360E
	900 KAR 014:010		922 KAR 001:360
196	501 KAR 006:030	199.894	922 KAR 002:160E
	501 KAR 006:290		922 KAR 002:160
197	501 KAR 006:030		922 KAR 002:280
	501 KAR 006:290	199.896	922 KAR 001:470
196.035	501 KAR 002:060		922 KAR 002:160E
196.020	501 KAR 002:060		922 KAR 002:160
196.030	501 KAR 006:250	199.898	922 KAR 002:160E
197.045	501 KAR 002:060		922 KAR 002:160
	725 KAR 002:015	199.8982	922 KAR 001:470
198B.010	815 KAR 007:120		922 KAR 002:160E
198B.032	725 KAR 002:015		922 KAR 002:160
198B.040	815 KAR 007:110	199.899	922 KAR 002:160E
	815 KAR 007:120		922 KAR 002:160
198B.050	725 KAR 002:015	200.575	922 KAR 001:530
	815 KAR 004:025	200.654	902 KAR 030:120
	815 KAR 007:110	200.668	902 KAR 030:120
	815 KAR 007:120	202A	907 KAR 017:005
	815 KAR 010:060		908 KAR 003:010E
	815 KAR 020:195		908 KAR 003:010
	815 KAR 035:020	202A.011	702 KAR 007:150
198B.060	815 KAR 007:110		921 KAR 002:015E
	815 KAR 007:120		921 KAR 002:015
198B.070	815 KAR 007:110	202A.051	922 KAR 005:070
198B.080	815 KAR 007:120	202A.410	501 KAR 014:010
198B.260	815 KAR 007:120	202B	908 KAR 003:010E
	902 KAR 020:016		908 KAR 003:010
198B.400	815 KAR 004:010	202B.100	922 KAR 005:070

KRS SECTION	REGULATION	KRS SECTION	REGULATION
205.175	921 KAR 001:020		921 KAR 001:400
205.177	921 KAR 001:020	205.712	921 KAR 001:020
205.201	910 KAR 001:190		921 KAR 001:390
205.2005	921 KAR 003:026E	205.721	921 KAR 001:390
	921 KAR 003:027E	205.730	921 KAR 001:020
	921 KAR 003:027		921 KAR 001:390
205.203	910 KAR 001:190	205.735	921 KAR 001:020
205.211	922 KAR 001:565	205.7685	921 KAR 001:020
205.240	921 KAR 004:122E	205.772	921 KAR 001:020
	921 KAR 004:122	205.774	921 KAR 001:020
205.245	921 KAR 002:015E	205.776	921 KAR 001:020
	921 KAR 002:015	205.800	921 KAR 001:020
	923 KAR 002:470	205.802	921 KAR 001:400E
205.455	910 KAR 001:190		921 KAR 001:400
205.465	910 KAR 001:190	205.8451	907 KAR 001:082
205.510	900 KAR 012:005E		907 KAR 001:604
	900 KAR 012:005		907 KAR 020:001
	907 KAR 001:082	205.8451-205.8483	907 KAR 017:005
	907 KAR 003:170	205.990	921 KAR 001:020
	907 KAR 010:815		921 KAR 001:400E
	907 KAR 010:830		921 KAR 001:400
250.520	907 KAR 001:082	209	902 KAR 020:016
	907 KAR 001:104		922 KAR 002:280
	907 KAR 020:020		922 KAR 005:070
205.5510-205.5520	907 KAR 023:020E	209.020	502 KAR 012:010
	907 KAR 023:020		921 KAR 002:015E
205.559	900 KAR 012:005E		921 KAR 002:015
	900 KAR 012:005	209.030	502 KAR 012:010
	907 KAR 003:170		906 KAR 001:180
205.5591	900 KAR 012:005E	209.032	902 KAR 020:081
	900 KAR 012:005		906 KAR 001:180
	907 KAR 003:170	209A.020	502 KAR 012:010
205.560	907 KAR 001:604	209A.030	502 KAR 012:010
	907 KAR 003:170		910 KAR 001:190
	907 KAR 023:020E	209A.100	502 KAR 012:010
205.561	907 KAR 023:020	209A.110	502 KAR 012:010
	907 KAR 023:020E	209A.130	502 KAR 012:010
	907 KAR 023:020	210.366	201 KAR 026:175
205.5631	907 KAR 023:020E	211.015	902 KAR 010:120
	907 KAR 023:020		902 KAR 010:140
205.5632	907 KAR 023:020E		902 KAR 010:190
	907 KAR 023:020	211.090	902 KAR 004:030
205.5634	907 KAR 023:020E		902 KAR 008:100
	907 KAR 023:020		902 KAR 010:120
205.5636	907 KAR 023:020E	211.170	902 KAR 008:060
	907 KAR 023:020		902 KAR 008:100
205.5638	907 KAR 023:020E		902 KAR 008:120
	907 KAR 023:020	211.1751	902 KAR 008:060
205.5639	907 KAR 023:020E		902 KAR 008:100
	907 KAR 023:020	211.1752	902 KAR 008:060
205.565	907 KAR 010:830	211.1755	902 KAR 008:060
205.622	907 KAR 001:082	211.180	902 KAR 002:212E
205.624	907 KAR 001:005		902 KAR 002:213E
	907 KAR 017:010		902 KAR 002:230E
205.6312	907 KAR 001:005		902 KAR 002:240E
	907 KAR 001:604		902 KAR 002:250E
205.6316	907 KAR 023:020E		902 KAR 004:030
	907 KAR 023:020		902 KAR 010:190
205.637	907 KAR 010:815		902 KAR 048:010
	907 KAR 010:830		902 KAR 048.020
205.638	907 KAR 010:830		902 KAR 048:030
205.639	906 KAR 001:110		902 KAR 048:040
	907 KAR 010:815	211.185	902 KAR 010:121
	907 KAR 010:830	211.332	201 KAR 017:110
205.640	907 KAR 010:815		900 KAR 012:005E
	907 KAR 010:830		900 KAR 012:005
205.6405	907 KAR 010:815	211.334	201 KAR 017:110
205.6406	907 KAR 010:815	211.336	201 KAR 017:110
205.6407	907 KAR 010:815	211.338	201 KAR 017:110
205.6408	907 KAR 010:815	211.360	902 KAR 010:140
204.6485	907 KAR 001:604	211.375	902 KAR 010:140
205.710	921 KAR 001:020	211.600	502 KAR 012:010
	921 KAR 001:390	211.970	902 KAR 010:140
	921 KAR 001:400E	211.990	902 KAR 010:120

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	902 KAR 010:121		907 KAR 001:030
	902 KAR 010:140	216.9375	902 KAR 020:081
211.994	902 KAR 048:010		907 KAR 001:030
	902 KAR 048:010	216.935-216.939	910 KAR 004:010
211.210	902 KAR 010:120	216.939	907 KAR 001:030
211.220	902 KAR 010:120	216A.070	201 KAR 006:020
211.350	815 KAR 035:020		201 KAR 006:060
211.647	902 KAR 030:120	216A.080	201 KAR 006:020
211.684	922 KAR 001:470		201 KAR 006:040
211.842-211.852	902 KAR 020:016	216A.090	201 KAR 006:040
	902 KAR 020:106	216A.110	201 KAR 006:060
	906 KAR 001:110	216A.130	201 KAR 006:060
211.900-211.905	902 KAR 048:010	216B	921 KAR 002:015E
	902 KAR 048:010		921 KAR 002:015
211.990	902 KAR 010:120	216B.010	900 KAR 006:075E
	902 KAR 048:010		900 KAR 006:075
211.994	902 KAR 048:010		902 KAR 020:016
	902 KAR 048:010		902 KAR 020:018
211.9061-200.9079	902 KAR 048:010	216B.010-216B.130	900 KAR 005:020E
211.9063	902 KAR 048:030		900 KAR 005:020
	902 KAR 048:040		902 KAR 020:081
211.9069	902 KAR 048:030	216B.015	502 KAR 012:010
211.9071	902 KAR 048:030		900 KAR 006:075E
	902 KAR 048:040		900 KAR 006:075
211.9075	902 KAR 048:030		902 KAR 002:020
212.170	902 KAR 008:060		902 KAR 002:230E
	902 KAR 008:100		902 KAR 020:016
	902 KAR 008:120		902 KAR 020:018
212.626	815 KAR 007:110		902 KAR 020:106
212.870	902 KAR 008:060		906 KAR 001:110
	902 KAR 008:100		906 KAR 001:180
	902 KAR 008:120	216B.040	900 KAR 006:075E
213.036	921 KAR 001:390		900 KAR 006:075
213.046	921 KAR 001:390		902 KAR 020:016
	921 KAR 001:400E		902 KAR 020:018
	921 KAR 001:400		906 KAR 001:110
213.071	921 KAR 001:390	216B.042	902 KAR 020:016
214	902 KAR 020:016		902 KAR 020:018
214.010	902 KAR 002:212E		902 KAR 020:106
	902 KAR 002:213E	216B.0425	902 KAR 020:016
	902 KAR 002:221E	216B.045	902 KAR 020:016
214.020	902 KAR 002:221E		902 KAR 020:018
214.036	922 KAR 002:160E	216B.050	902 KAR 020:016
	922 KAR 002:160		902 KAR 020:018
214.155	902 KAR 004:030	216B.055	902 KAR 020:016
214.623	902 KAR 002:020		902 KAR 020:018
214.625	902 KAR 002:020	216B.062	900 KAR 006:075E
214.645	902 KAR 002:020		900 KAR 006:075
	902 KAR 002:212E	216B.075	902 KAR 020:016
	902 KAR 002:213E		902 KAR 020:018
214.990	902 KAR 002:020	216B.085	902 KAR 020:016
215.520	902 KAR 002:020		902 KAR 020:018
216.2970	902 KAR 020:016	216B.090	900 KAR 006:075E
	902 KAR 030:120		900 KAR 006:075
216.378	906 KAR 001:110	216B.095	900 KAR 006:075E
216.379	906 KAR 001:110		900 KAR 006:075
216.380	906 KAR 001:110	216B.105	906 KAR 001:110
	907 KAR 010:815	216B.105-216B.125	902 KAR 020:016
	907 KAR 010:830		902 KAR 020:018
216.510	900 KAR 014:010E	216B.115	900 KAR 006:075E
	900 KAR 014:010		900 KAR 006:075
	902 KAR 020:460E	216B.140-216B.175	902 KAR 020:016
216.530	921 KAR 002:015E	216B.153	902 KAR 020:106
	921 KAR 002:015		906 KAR 001:110
216.557	921 KAR 002:015E	216B.165	902 KAR 020:106
	921 KAR 002:015		906 KAR 001:110
216.710-216.716	906 KAR 001:180	216B.185	902 KAR 020:016
	910 KAR 004:010	216B.190	902 KAR 020:016
216.765	921 KAR 002:015E	216B.230-216B.239	902 KAR 020:016
	921 KAR 002:015	216B.250	902 KAR 020:016
216.935	902 KAR 020:081	216B.400	502 KAR 012:010
	907 KAR 001:030	216B.400-216B.402	902 KAR 020:016
216.936	907 KAR 001:030	216B.455	900 KAR 006:075E
216.937	902 KAR 020:081		900 KAR 006:075

KRS SECTION	REGULATION	KRS SECTION	REGULATION
216B.990	502 KAR 012:010 900 KAR 006:075E 900 KAR 006:075 902 KAR 020:016 902 KAR 020:018 902 KAR 020:081 902 KAR 020:106 906 KAR 001:110		810 KAR 004:040 810 KAR 004:060 810 KAR 005:030 810 KAR 005:060 810 KAR 005:070 810 KAR 008:010 810 KAR 008:025E 810 KAR 008:025
217.015	201 KAR 002:225 907 KAR 023:020E 907 KAR 023:020	230.225	810 KAR 009:010 810 KAR 007:050 810 KAR 008:010 810 KAR 008:025E
217.055	201 KAR 002:076		810 KAR 008:025E
217.065	201 KAR 002:076		810 KAR 008:025
217.186	201 KAR 002:360	230.240	810 KAR 004:030 810 KAR 008:010
217.211	806 KAR 017:280		810 KAR 008:025E
217.660	902 KAR 048:010		810 KAR 008:025
217.801	902 KAR 048:010 902 KAR 048:010 902 KAR 048:040	230.260	810 KAR 003:020 810 KAR 004:030 810 KAR 004:040 810 KAR 004:060 810 KAR 005:030 810 KAR 005:060
217B	302 KAR 050:021 302 KAR 050:046 302 KAR 050:056		810 KAR 005:070 810 KAR 008:010 810 KAR 008:025E
218A.010	016 KAR 001:030		810 KAR 008:025
218A.1431	502 KAR 047:010		810 KAR 008:010
218A.172	201 KAR 020:057		810 KAR 008:025E
218A.205	201 KAR 002:020 201 KAR 002:050 201 KAR 002:430 201 KAR 008:520 201 KAR 020:057	230.265	810 KAR 008:010 810 KAR 008:025E 810 KAR 008:025
224A.011	201 KAR 020:215 200 KAR 017:110E	230.280	810 KAR 003:020 810 KAR 005:070
224A.020	200 KAR 017:110	230.290	810 KAR 003:020 810 KAR 004:030 810 KAR 005:070 810 KAR 008:010
224A.020	200 KAR 017:110		810 KAR 008:025E
224A.035	200 KAR 017:110E		810 KAR 008:025
224A.040	200 KAR 017:110E		810 KAR 003:020
224A.050-224A.314	200 KAR 017:110E	230.300	810 KAR 005:070
224.1-010-410	200 KAR 017:110	230.310	810 KAR 003:020 810 KAR 004:030 810 KAR 005:070
224.20-100	502 KAR 047:010		810 KAR 009:010
224.20-110	401 KAR 051:010		810 KAR 003:020
224.20.120	401 KAR 051:010	230.320	810 KAR 004:030 810 KAR 005:070
224.60-105	815 KAR 030:060		810 KAR 008:010
224.60-135	815 KAR 030:060		810 KAR 008:025E
224.99-010	502 KAR 047:010		810 KAR 008:025
227.300	725 KAR 002:015 815 KAR 007:120 815 KAR 010:060 815 KAR 030:060	230.330	810 KAR 009:010 810 KAR 003:020 810 KAR 007:050 810 KAR 009:010
227.320	815 KAR 010:060		810 KAR 008:010
227.330	815 KAR 010:060		810 KAR 008:025E
227.331	815 KAR 010:060	230.370	810 KAR 008:025
227.460	815 KAR 035:020		810 KAR 007:050
227.480	815 KAR 035:020		815 KAR 030:010
227.487	815 KAR 035:020	230.804	815 KAR 030:010
227.489	815 KAR 007:110	234.120	815 KAR 010:060
227.491	815 KAR 035:020	234.130	301 KAR 006:001
227.550	815 KAR 007:120	234.140	301 KAR 006:070
227.700	815 KAR 010:070	235	301 KAR 001:018
227.702	815 KAR 010:070	235.40	902 KAR 008:100
227.704	815 KAR 010:070	235.220	301 KAR 002:172
227.708	815 KAR 010:070	235.315	502 KAR 011:010
227.710	815 KAR 010:070	237.109	502 KAR 011:060
227.715	815 KAR 010:070	237.110	502 KAR 011:070
227.750	815 KAR 010:070		502 KAR 013:030
227.752	815 KAR 010:070		502 KAR 013:040
227.990	815 KAR 010:060		502 KAR 013:050
230	810 KAR 006:001		502 KAR 013:060
230.215	810 KAR 003:020 810 KAR 004:010 810 KAR 004:030		

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	502 KAR 013:080	281A.130	502 KAR 010:120
	502 KAR 030:060	281A.150	502 KAR 010:120
	503 KAR 004:010	281A.160	502 KAR 010:035
	503 KAR 004:040		502 KAR 010:110
	503 KAR 004:050		502 KAR 010:120
	921 KAR 001:390	281A.170	502 KAR 010:120
231.115	902 KAR 008:100	285.065	301 KAR 002:082
237.120	503 KAR 004:040	285.085	301 KAR 002:082
237.122	503 KAR 004:040	302.31	921 KAR 001:390
237.124	503 KAR 004:040	302.33	921 KAR 001:390
	503 KAR 004:050	302.34	921 KAR 001:020
237.126	503 KAR 004:040	302.50	921 KAR 001:400E
237.138	502 KAR 013:030		921 KAR 001:400
	502 KAR 013:040	302.56	921 KAR 001:400E
	502 KAR 013:050		921 KAR 001:400
	502 KAR 013:060	302.80	921 KAR 001:400E
	502 KAR 013:080		921 KAR 001:400
237.140	502 KAR 013:030	303.107	921 KAR 001:020
	502 KAR 013:040	303.21	921 KAR 001:020
	502 KAR 013:050	303.322	902 KAR 030:120
	502 KAR 013:060	303.4	921 KAR 001:400E
	502 KAR 013:080		921 KAR 001:400
237.142	502 KAR 013:030	303.421	902 KAR 030:120
	502 KAR 013:040	303.5	921 KAR 001:390
	502 KAR 013:050	303.70	921 KAR 001:020
	502 KAR 013:060	303.8	921 KAR 001:400E
	502 KAR 013:080		921 KAR 001:400
237.138-237.142	502 KAR 013:010	303.30-303.32	921 KAR 001:400E
241.010	103 KAR 030:120		921 KAR 001:400
241.060	804 KAR 011:041	304	806 KAR 011:020
	804 KAR 014:011		921 KAR 001:020
242.120	031 KAR 004:071E		921 KAR 001:390
	031 KAR 004:071	304.1-010	806 KAR 014:007
243.027	804 KAR 004:415	304.1-050	806 KAR 011:020
243.028	804 KAR 004:415		806 KAR 014:007
243.029	804 KAR 004:415		806 KAR 017:575
243.030	103 KAR 030:120		806 KAR 017:585
	804 KAR 004:212		806 KAR 017:590
243.040	103 KAR 030:120		806 KAR 046:050
243.100	804 KAR 004:480	304.1-070	806 KAR 010:030
243.220	804 KAR 004:221	304.1-120	806 KAR 011:020
243.260	804 KAR 004:251	304.2-100	806 KAR 017:290
243.520	804 KAR 004:480		806 KAR 017:350
244.130	804 KAR 001:102	304.2-110	806 KAR 017:470
244.500	804 KAR 001:102	304.2-140	806 KAR 017:280
244.590	804 KAR 001:102	304.2-160	806 KAR 011:020
247.100	303 KAR 001:110		806 KAR 017:575
247.145	303 KAR 001:005	304.2-165	806 KAR 011:020
	303 KAR 001:010		806 KAR 017:575
	303 KAR 001:015	304.2-230	806 KAR 017:290
	303 KAR 001:075	304.2-310	806 KAR 017:290
	303 KAR 001:080		806 KAR 017:450
	303 KAR 001:090	304.3-240	806 KAR 012:010
	303 KAR 001:100	304.3-270	806 KAR 014:007
217.147	303 KAR 001:110	304.4-010	806 KAR 009:380
247.153	303 KAR 001:005		806 KAR 009:390
247.154	303 KAR 001:005		806 KAR 014:007
	303 KAR 001:010	304.5-040	806 KAR 011:020
	303 KAR 001:015	304.5-140	806 KAR 005:025
247.160	303 KAR 001:075	304.9-020	806 KAR 009:390
258.015	922 KAR 001:310		806 KAR 011:020
258.035	922 KAR 001:310		806 KAR 017:575
258.065	902 KAR 002:020		806 KAR 017:590
258.990	902 KAR 002:020	304.9-030	806 KAR 009:380
260.850-260.869	302 KAR 050:021	304.9-051	806 KAR 011:020
	302 KAR 050:031	304.9-052	806 KAR 017:450
	302 KAR 050:046	304.9-055	806 KAR 017:590
	302 KAR 050:056	304.9-105	806 KAR 009:380
	302 KAR 050:080	304.9-130	806 KAR 009:380
273.161	922 KAR 001:310	304.9-150	806 KAR 009:380
	922 KAR 001:315	304.9-230	806 KAR 009:380
278.0154	921 KAR 004:122E	304.9-260	806 KAR 009:380
	921 KAR 004:122	304.9-270	806 KAR 009:380
281A.120	502 KAR 010:120	304.9-440	806 KAR 009:390

KRS SECTION	REGULATION	KRS SECTION	REGULATION
304.9-495	806 KAR 009:380		900 KAR 013:010
304.9-497	806 KAR 009:380	304.17B-021	806 KAR 017:350
304.9-782	806 KAR 009:390		900 KAR 013:010
304.9-784	806 KAR 009:390	304.17B-023	806 KAR 017:350
304.10-030	806 KAR 010:030		900 KAR 013:010
304.10-040	806 KAR 010:030	304.17C-010	806 KAR 014:007
304.10-050	806 KAR 010:030		806 KAR 017:280
304.10-170	806 KAR 010:030		806 KAR 017:370
304.10-180	806 KAR 010:030	304.17C-030	806 KAR 017:280
304.11-030	806 KAR 011:020	304.17C-060	806 KAR 017:300
304.11-045	806 KAR 011:020	304.17C-070	806 KAR 017:300
304.12-010	806 KAR 012:010	304.17C-090	806 KAR 017:370
304.12-020	806 KAR 012:010	304.18-032	806 KAR 018:030
304.12-060	806 KAR 012:010	304.18-045	806 KAR 017:280
304.12-120	806 KAR 012:010	304.18-085	806 KAR 018:030
304.12.130	806 KAR 012:010	304.18-114	806 KAR 017:260
304.13-011	806 KAR 046:050	304.18-120	806 KAR 017:260
304.13-051	806 KAR 046:050	304.32-145	806 KAR 018:030
304.14-120	806 KAR 014:007	304.32-147	806 KAR 017:280
	806 KAR 046:050	304.32-185	806 KAR 018:030
304.14-190	806 KAR 014:007	304.32-330	806 KAR 017:280
304.14-640	907 KAR 020:001	304.38-225	806 KAR 017:280
304.17-042	806 KAR 018:030	304.38-240	907 KAR 003:170
304.17-380	806 KAR 014:007	304.39-010	806 KAR 017:370
304.17-412	806 KAR 017:280	304.39-080	806 KAR 039:070
304.17A	806 KAR 017:260	304.39-083	806 KAR 039:070
304.17A-005	806 KAR 011:020	304.39-085	806 KAR 039:070
	806 KAR 017:370	304.39-087	806 KAR 039:070
	806 KAR 017:470	304.39-090	806 KAR 039:070
	806 KAR 017:590	304.39-117	806 KAR 039:070
304.17A-095	806 KAR 014:007	304.39-340	806 KAR 017:370
304.17A-096	806 KAR 014:007	304.40-320	900 KAR 012:005E
304.17A-138	806 KAR 017:270		900 KAR 012:005
	900 KAR 012:005E	304.47-020	806 KAR 017:450
	900 KAR 012:005	304.48-020	806 KAR 046:050
304.17A-150	806 KAR 017:300	304.48-180	806 KAR 046:050
304.17A-161	806 KAR 017:575	304.99	806 KAR 017:300
304.17A-162	806 KAR 017:575	304.99-020	806 KAR 011:020
304.17A-200	806 KAR 017:450	304.99-085	806 KAR 010:030
304.17A-230	806 KAR 017:240	307.13	921 KAR 001:020
304.17A-235	806 KAR 017:300	309.080	907 KAR 001:082
304.17A-250	806 KAR 018:030	309.0814	201 KAR 035:070
304.17A-330	806 KAR 017:240	309.083	201 KAR 035:070
304.17A-410	806 KAR 011:020	309.0830	201 KAR 035:070
304.17A-500	806 KAR 017:300	309.0831	201 KAR 035:070
304.17A-527	806 KAR 017:300		907 KAR 001:082
304.17A-530	806 KAR 017:300	309.0832	201 KAR 035:070
304.17A-532	806 KAR 017:300	309.0833	201 KAR 035:070
304.17A-560	806 KAR 017:300	309.0834	201 KAR 035:070
304.17A-575	806 KAR 017:300	309.0841	201 KAR 035:070
304.17A-578	806 KAR 017:300	309.0842	201 KAR 035:070
304.17A-600	806 KAR 011:020	309.130	907 KAR 001:082
	806 KAR 017:280	309.350	201 KAR 042:010
	806 KAR 017:290	309.351	201 KAR 042:050
304.17A-607	806 KAR 017:370		201 KAR 042:110
304.17A-619	806 KAR 017:280	309.352	201 KAR 042:080
304.17A-621	806 KAR 017:290	309.355	201 KAR 042:010
304.17A-623	806 KAR 017:280		201 KAR 042:030
304.17A-631	806 KAR 017:290		201 KAR 042:050
304.17A-633	806 KAR 011:020		201 KAR 042:060
304.17A-660	806 KAR 017:585		201 KAR 042:061
304.17A-669	806 KAR 017:585		201 KAR 042:080
304.17A-700	806 KAR 017:370		201 KAR 042:110
	806 KAR 017:470	309.357	201 KAR 042:010
	806 KAR 017:590		201 KAR 042:040
304.17A-728	806 KAR 017:300	309.358	201 KAR 042:035
304.17A-730	806 KAR 017:370	309.359	201 KAR 042:035
304.17A-732	806 KAR 017:590		201 KAR 042:070
304.17A-750	806 KAR 017:450	309.361	201 KAR 042:040
304.17A-770	806 KAR 017:450		201 KAR 042:110
304.17A-802	806 KAR 011:020	309.362	201 KAR 042:035
304.17A-812	806 KAR 011:020		201 KAR 042:040
304.17A-846	806 KAR 017:470		201 KAR 042:050
304.17B-001	806 KAR 017:350		201 KAR 042:060

KRS SECTION	REGULATION	KRS SECTION	REGULATION
309.363	201 KAR 042:061 201 KAR 042:035 201 KAR 042:080	312.085 312.115 313.010	201 KAR 021:100 201 KAR 021:090 201 KAR 021:070
309.3631	201 KAR 042:080	313.021	902 KAR 020:106
309.404	201 KAR 047:010	313.022	201 KAR 008:600
309.406	201 KAR 047:010 201 KAR 047:030		201 KAR 008:520 201 KAR 008:600
309.412	201 KAR 047:010 201 KAR 047:030	313.030	201 KAR 008:520 902 KAR 020:106
309.414	201 KAR 047:010 201 KAR 047:030	313.035 313.100	201 KAR 008:550 201 KAR 008:520
309.416	201 KAR 047:010 201 KAR 047:030	314.011	201 KAR 020:057 201 KAR 020:215
309.418	201 KAR 047:010 201 KAR 047:030		201 KAR 020:220 201 KAR 020:280
309.420	201 KAR 047:010 201 KAR 047:030		201 KAR 020:320 502 KAR 012:010
310	902 KAR 020:016		702 KAR 007:150
310.005	910 KAR 001:190		902 KAR 020:016
310.021	201 KAR 033:015 902 KAR 020:018 910 KAR 001:190		902 KAR 020:081 907 KAR 001:082 907 KAR 001:104
310.031	201 KAR 033:015 910 KAR 001:190		907 KAR 017:005 907 KAR 020:001
311	906 KAR 001:110		922 KAR 001:310
311.282	902 KAR 002:020		922 KAR 002:160E
311.400	902 KAR 020:106		922 KAR 002:160
311.550	907 KAR 017:005 907 KAR 020:001	314.021	201 KAR 020:320 201 KAR 020:478
311.560	902 KAR 020:016	314.027	201 KAR 020:240
311.571	902 KAR 002:020 902 KAR 020:106	314.031 314.035	201 KAR 020:110 201 KAR 020:472 201 KAR 020:474 201 KAR 020:476
311.5975	900 KAR 012:005E 900 KAR 012:005		201 KAR 020:478 201 KAR 020:070E
311.621	906 KAR 001:180		201 KAR 020:070
311.621-311.643	907 KAR 017:010	314.041	201 KAR 020:085 201 KAR 020:110
311.710-311.810	902 KAR 020:106		201 KAR 020:240 201 KAR 020:320 201 KAR 020:370
311.720	922 KAR 001:310		201 KAR 020:480E
311.840	902 KAR 020:081 907 KAR 001:082 922 KAR 001:310		201 KAR 020:480 902 KAR 020:018 902 KAR 020:106
311.992	902 KAR 020:016		201 KAR 020:057 201 KAR 020:240 201 KAR 020:370
311A.030	202 KAR 007:545E 202 KAR 007:545 202 KAR 007:560E 202 KAR 007:560		201 KAR 020:016 902 KAR 020:081 902 KAR 020:106
311A.100	502 KAR 030:060	314.042	201 KAR 020:070 201 KAR 020:085
311A.190	202 KAR 007:545 202 KAR 007:560		201 KAR 020:240 201 KAR 020:370
311B	902 KAR 020:016		902 KAR 020:016 902 KAR 020:081
311B.050	201 KAR 046:020E 201 KAR 046:020 201 KAR 046:060	314.051	902 KAR 020:106 201 KAR 020:070 201 KAR 020:085
311B.100	201 KAR 046:020E 201 KAR 046:020		201 KAR 020:110 201 KAR 020:240 201 KAR 020:370
311B.110	201 KAR 046:020E 201 KAR 046:020 201 KAR 046:060		201 KAR 020:480E 201 KAR 020:480 902 KAR 020:106
311B.120	201 KAR 046:020E 201 KAR 046:020		201 KAR 020:070E 201 KAR 020:085
311B.130	201 KAR 046:020E 201 KAR 046:020	314.071	201 KAR 020:240 201 KAR 020:370
311B.140	201 KAR 046:020E 201 KAR 046:020		201 KAR 020:085 201 KAR 020:215
311B.180	201 KAR 046:020E 201 KAR 046:020	314.073	201 KAR 020:220 201 KAR 020:240
311B.190	201 KAR 046:020E 201 KAR 046:020 202 KAR 007:545E		201 KAR 020:240 201 KAR 020:478
312.019	202 KAR 007:560E 201 KAR 021:035 201 KAR 021:054 201 KAR 021:070 201 KAR 021:090	314.089 314.091 314.101	201 KAR 020:110 201 KAR 020:370 201 KAR 020:478 201 KAR 020:240

KRS SECTION	REGULATION	KRS SECTION	REGULATION
314.103	201 KAR 020:070E 201 KAR 020:070 201 KAR 020:110	315.121	201 KAR 002:074 201 KAR 002:106E 201 KAR 002:106 201 KAR 002:270 201 KAR 002:430
314.109	201 KAR 020:070 201 KAR 020:110		201 KAR 002:430
314.111	201 KAR 020:260E 201 KAR 020:280 201 KAR 020:320 201 KAR 020:360	315.131 315.135	201 KAR 002:430 201 KAR 002:411E 201 KAR 002:412E
314.103	201 KAR 020:370 201 KAR 020:476 201 KAR 020:478	315.136 315.191	201 KAR 002:420 201 KAR 002:030 201 KAR 002:050 201 KAR 002:076 201 KAR 002:225 201 KAR 002:270 201 KAR 002:440
314.109	201 KAR 020:070E		201 KAR 002:411E 201 KAR 002:412E
314.131	201 KAR 020:220 201 KAR 020:260E 201 KAR 020:280 201 KAR 020:320 201 KAR 020:472 201 KAR 020:474 201 KAR 020:476	315.205 315.210 315.340	201 KAR 002:030 201 KAR 002:106E 201 KAR 002:106 201 KAR 002:106E
314.137	201 KAR 020:470 201 KAR 020:472 201 KAR 020:474 201 KAR 020:476 201 KAR 020:478	315.342 315.350 315.402	201 KAR 002:106E 201 KAR 002:106 201 KAR 002:106E 201 KAR 002:106 201 KAR 002:050 201 KAR 002:106E 201 KAR 002:106
314.142	201 KAR 020:240		201 KAR 002:106E
314.161	201 KAR 020:240		201 KAR 002:106
314.171	201 KAR 020:240	315.4102	201 KAR 002:106E
314.193	201 KAR 020:057		201 KAR 002:106
314.195	201 KAR 020:057	315.450	201 KAR 002:440
314.475	201 KAR 020:070E 201 KAR 020:070 201 KAR 020:110 201 KAR 020:370	315.452 315.454 315.456 315.458	201 KAR 002:440 201 KAR 002:440 201 KAR 002:440 201 KAR 002:440
314.991	201 KAR 020:110 201 KAR 020:215 201 KAR 020:478	315.460 315.500	201 KAR 002:440 201 KAR 002:411E 201 KAR 002:412E
315.010	201 KAR 002:074 201 KAR 002:225 201 KAR 002:411E 201 KAR 002:412E 201 KAR 002:420 902 KAR 002:020	316.010 316.030	201 KAR 015:110E 201 KAR 015:110 201 KAR 015:040E 201 KAR 015:040 201 KAR 015:050E 201 KAR 015:050
315.020	201 KAR 002:074 201 KAR 002:076 201 KAR 002:225 201 KAR 002:411E 201 KAR 002:412E	316.125	201 KAR 015:110E 201 KAR 015:110 201 KAR 015:030E 201 KAR 015:030 201 KAR 015:110E 201 KAR 015:110
315.030	201 KAR 002:074		201 KAR 015:110E
315.035	201 KAR 002:050 201 KAR 002:076 201 KAR 002:106E 201 KAR 002:106 201 KAR 002:225 906 KAR 001:110	316.127 316.130	201 KAR 015:110E 201 KAR 015:110 201 KAR 015:030E 201 KAR 015:030 201 KAR 015:110E 201 KAR 015:110
315.0351	201 KAR 002:050 201 KAR 002:076 201 KAR 002:106E	316.132 316.140	201 KAR 015:030E 201 KAR 015:030 201 KAR 015:030E 201 KAR 015:030
315.036	201 KAR 002:106 201 KAR 002:050 201 KAR 002:106E 201 KAR 002:106	316.165 316.260	201 KAR 015:030 201 KAR 015:125E 201 KAR 015:125 201 KAR 015:110E
315.050	201 KAR 002:020 201 KAR 002:050 201 KAR 002:411E 201 KAR 002:412E 201 KAR 002:420	317.410	201 KAR 015:110 201 KAR 014:030 201 KAR 014:085 201 KAR 014:105 201 KAR 014:110 201 KAR 014:115 201 KAR 014:150
315.060	201 KAR 002:050		201 KAR 014:015 201 KAR 014:040 201 KAR 014:065 201 KAR 014:085 201 KAR 014:105
315.065	105 KAR 001:390 201 KAR 002:411E 201 KAR 002:412E	317.440	
315.110	201 KAR 002:050		
315.120	105 KAR 001:390 201 KAR 002:050		

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	201 KAR 014:110		201 KAR 043:080
	201 KAR 014:115	319C.070	201 KAR 043:010
	201 KAR 014:125		201 KAR 043:060
317.450	201 KAR 014:015	319C.080	201 KAR 043:010
	201 KAR 014:030		201 KAR 043:020
	201 KAR 014:040		201 KAR 043:030
	201 KAR 014:050	319C.110	201 KAR 043:060
	201 KAR 014:065	319C.140	201 KAR 043:100
	201 KAR 014:105	321.181	902 KAR 002:020
	201 KAR 014:125	322.010	725 KAR 002:015
	201 KAR 014:150	323.010	725 KAR 002:015
	201 KAR 014:180	323.020	725 KAR 002:015
317.570	201 KAR 014:015	323.050	201 KAR 006:060
317.590	201 KAR 014:040	323.060	201 KAR 006:060
317A.020	201 KAR 012:082E	323.110	201 KAR 019:087
	201 KAR 012:082	323.120	201 KAR 006:060
317A.050	201 KAR 012:082E		201 KAR 019:087
	201 KAR 012:082	323.210	201 KAR 019:087
317A.090	201 KAR 012:082E	324.010	201 KAR 011:121
	201 KAR 012:082	324.111	201 KAR 011:121
318.010	815 KAR 020:195	324.112	201 KAR 011:121
318.030	815 KAR 020:050	324.121	201 KAR 011:121
318.134	815 KAR 020:050	324.160	201 KAR 011:121
	815 KAR 020:195	324.281	201 KAR 011:121
318.160	815 KAR 020:050	324.310	201 KAR 011:121
319.005	201 KAR 026:130	324.360	201 KAR 011:121
319.010	201 KAR 026:115	324B.030	201 KAR 047:010
	907 KAR 001:082	324B.040	201 KAR 047:010
319.015	201 KAR 026:215	325.261	201 KAR 001:190
319.032	201 KAR 026:130	325.270	201 KAR 001:190
	201 KAR 026:175	327.010	201 KAR 022:001
	201 KAR 026:185		201 KAR 022:020
	201 KAR 026:230		201 KAR 022:045
	201 KAR 026:250		902 KAR 020:081
319.050	201 KAR 026:125		907 KAR 001:604
	201 KAR 026:155	327.040	201 KAR 022:053
	201 KAR 026:160	327.050	201 KAR 022:001
	201 KAR 026:175		201 KAR 022:020
	201 KAR 026:185		201 KAR 022:070
	201 KAR 026:190	327.060	201 KAR 022:020
	201 KAR 026:230		201 KAR 022:070
	907 KAR 001:082	327.070	201 KAR 022:045
319.053	201 KAR 026:175		201 KAR 022:053
	201 KAR 026:190	327.075	201 KAR 022:020
	201 KAR 026:230	327.080	201 KAR 022:020
	201 KAR 026:270	327.100	201 KAR 022:001
	907 KAR 001:082	327.300	201 KAR 022:170
319.056	201 KAR 026:190	327.310	201 KAR 022:020
	201 KAR 026:270	329.010-329.030	502 KAR 020:020
319.064	201 KAR 026:160	322.110	902 KAR 010:120
	201 KAR 026:175	323.020	902 KAR 010:120
	201 KAR 026:190	333.030	902 KAR 020:016
	201 KAR 026:230		902 KAR 020:106
	201 KAR 026:250	332.015	502 KAR 010:010
319.071	201 KAR 026:160	332.095	791 KAR 001:070
	201 KAR 026:175	332.204	502 KAR 010:030
	201 KAR 026:225		502 KAR 010:035
319.082	201 KAR 026:130	332.216	502 KAR 010:020
	201 KAR 026:215		502 KAR 010:050
319.118	201 KAR 026:130		502 KAR 010:060
319.140	201 KAR 026:310		502 KAR 010:080
319.990	201 KAR 026:130	333	902 KAR 020:018
319A.010	902 KAR 020:081	333.020	902 KAR 002:020
	907 KAR 001:604	333.130	902 KAR 002:020
319C	201 KAR 043:090		902 KAR 002:212E
319C.010	907 KAR 001:082		902 KAR 002:213E
319C.050	201 KAR 043:050	334A.020	016 KAR 002:050
	201 KAR 043:060		902 KAR 020:081
	201 KAR 043:080		907 KAR 001:604
319C.060	201 KAR 043:030	334A.033	016 KAR 002:050
	201 KAR 043:040	334A.035	016 KAR 002:050
	201 KAR 043:050	334A.060	016 KAR 002:050
	201 KAR 043:060	334A.188	201 KAR 017:110
	201 KAR 043:071	334A.190	016 KAR 002:050

KRS SECTION	REGULATION	KRS SECTION	REGULATION
334A.200	201 KAR 017:110	341.250	787 KAR 001:010
335.080	907 KAR 001:082		787 KAR 001:220
335.100	902 KAR 020:018		787 KAR 001:260
	907 KAR 001:082	341.262	787 KAR 001:010
335.300	907 KAR 001:082		787 KAR 001:220
335.500	907 KAR 001:082	341.270	787 KAR 001:210
336.015	803 KAR 005:005	341.272	787 KAR 001:210
336.040	803 KAR 005:005		787 KAR 001:290
336.125	803 KAR 005:005	341.350	787 KAR 001:090
336.220	922 KAR 002:280		787 KAR 001:150
337	803 KAR 001:006		787 KAR 001:310
337.010	803 KAR 001:076	341.360	787 KAR 001:060
337.275	803 KAR 001:063		787 KAR 001:080
	803 KAR 001:064		787 KAR 001:090
	803 KAR 001:065		787 KAR 001:150
	803 KAR 001:066	341.370	787 KAR 001:060
	803 KAR 001:067		787 KAR 001:090
	803 KAR 001:068		787 KAR 001:150
	803 KAR 001:070	341.380	787 KAR 001:090
	803 KAR 001:071		787 KAR 001:150
	803 KAR 001:075	341.413	787 KAR 001:360E
	803 KAR 001:076		787 KAR 001:360
	803 KAR 001:080	341.420	787 KAR 001:110
	803 KAR 001:081	341.430	787 KAR 001:110
	803 KAR 001:090	341.440	787 KAR 001:110
	922 KAR 002:160E	341.450	787 KAR 001:110
	922 KAR 002:160	341.500	787 KAR 001:140
337.275-337.325	803 KAR 001:005	341.540	787 KAR 001:300
	803 KAR 001:091	341.510	787 KAR 001:140
337.285	803 KAR 001:060	341.530	787 KAR 001:060
	803 KAR 001:061	342	725 KAR 002:015
	803 KAR 001:063		803 KAR 025:195E
	803 KAR 001:064		803 KAR 025:195
	803 KAR 001:065	342.0011	803 KAR 025:305E
	803 KAR 001:066	342.020	803 KAR 025:305E
	803 KAR 001:067	342.040	803 KAR 025:305E
	803 KAR 001:068	342.270	803 KAR 025:305E
	803 KAR 001:070	342.730	803 KAR 025:305E
	803 KAR 001:071	344	725 KAR 002:015
	803 KAR 001:075	344.030	101 KAR 001:365
	803 KAR 001:076		101 KAR 002:102
	803 KAR 001:080		101 KAR 003:015
	803 KAR 001:081		105 KAR 001:210
	803 KAR 001:090	349.3401	501 KAR 014:010
337.345	803 KAR 001:005	355.9	030 KAR 005:011E
	803 KAR 001:091		030 KAR 005:011
337.385-337.405	803 KAR 001:005		030 KAR 005:021E
	803 KAR 001:091		030 KAR 005:021
337.420-337.433	803 KAR 001:025	355.9-513A	030 KAR 005:031E
	803 KAR 001:026		030 KAR 005:031
338	803 KAR 002:321E	355.9-515	030 KAR 005:031E
	803 KAR 002:321		030 KAR 005:031
	803 KAR 002:419		030 KAR 005:041E
	803 KAR 002:426E		030 KAR 005:041
	803 KAR 002:426		030 KAR 005:051E
338.015	803 KAR 002:330E		030 KAR 005:051
	803 KAR 002:402	355.9-516	030 KAR 005:021E
	803 KAR 002:445		030 KAR 005:021
	803 KAR 002:411		030 KAR 005:031E
338.051	803 KAR 002:411		030 KAR 005:031
338.061	725 KAR 002:015	355.9-516A	030 KAR 005:031E
341	787 KAR 001:010		030 KAR 005:031
341.070	787 KAR 001:020	355.9-519	030 KAR 005:041E
	787 KAR 001:220		030 KAR 005:041
	787 KAR 001:260		030 KAR 005:051E
	787 KAR 001:290		030 KAR 005:051
	787 KAR 001:300		030 KAR 005:060E
341.115	787 KAR 001:020		030 KAR 005:060
341.145	787 KAR 001:150	355.9-520	030 KAR 005:031E
341.190	787 KAR 001:010		030 KAR 005:031
	787 KAR 001:020	355.9-521	030 KAR 005:021E
	787 KAR 001:060		030 KAR 005:021
	787 KAR 001:220	355.9-523	030 KAR 005:060E
341.243	787 KAR 001:010		030 KAR 005:060

KRS SECTION	REGULATION	KRS SECTION	REGULATION
355.9-525	030 KAR 005:060E	439.352	501 KAR 001:050
	030 KAR 005:060	439.356	501 KAR 001:050
355.9-526	030 KAR 005:041E	439.358	501 KAR 001:050
	030 KAR 005:041	439.551	501 KAR 006:250
	030 KAR 005:051E	439.553	501 KAR 006:250
	030 KAR 005:051	439.3105-439.3108	501 KAR 006:250
365.571	030 KAR 003:010	440.050	907 KAR 003:170
365.573	030 KAR 003:010	440.120	907 KAR 023:020E
365.581	030 KAR 003:020		907 KAR 023:020
365.593	030 KAR 003:010	441	501 KAR 003:150
	030 KAR 003:030	441.045	501 KAR 002:060
367.110-367-360	791 KAR 001:010		501 KAR 003:110
369.101-369.120	907 KAR 001:082		501 KAR 003:120
381.9203	201 KAR 011:121		501 KAR 003:170
383.580	201 KAR 011:121		501 KAR 007:040
387	922 KAR 001:565		501 KAR 007:060
387.500-387.800	907 KAR 017:010		501 KAR 007:090
387.510	907 KAR 017:005		501 KAR 007:120
387.540	922 KAR 005:070		501 KAR 007:140
400.203	907 KAR 003:170		501 KAR 007:150
403.160	921 KAR 001:400E	441.046	502 KAR 014:010
	921 KAR 001:400	441.055	501 KAR 003:110
403.210-403.240	921 KAR 001:400E		501 KAR 003:120
	921 KAR 001:400		501 KAR 003:130
403.211	921 KAR 001:020		501 KAR 003:170
403.270-403.355	922 KAR 001:565		501 KAR 007:040
403.352	922 KAR 001:470		501 KAR 007:060
403.707	502 KAR 012:010		501 KAR 007:090
405.024	922 KAR 001:565		501 KAR 007:100
405.430	921 KAR 001:020		501 KAR 007:110
	921 KAR 001:390		501 KAR 007:120
	921 KAR 001:400E		501 KAR 007:130
	921 KAR 001:400		501 KAR 007:140
405.440	921 KAR 001:400E		501 KAR 007:150
	921 KAR 001:400	441.075	501 KAR 002:060
405.991	921 KAR 001:400E	441.115	501 KAR 007:120
	921 KAR 001:400	441.125	501 KAR 003:130
406.011	921 KAR 001:390		501 KAR 007:120
406.021	921 KAR 001:390	441.203	806 KAR 017:370
	921 KAR 001:400E	441.206	806 KAR 017:370
	921 KAR 001:400	441.207	806 KAR 017:370
406.025	921 KAR 001:390	441.208	806 KAR 017:370
	921 KAR 001:400E	441.250	806 KAR 017:370
	921 KAR 001:400	441.255	806 KAR 017:370
406.035	921 KAR 001:020	441.256	806 KAR 017:370
406.180	921 KAR 001:390	441.258	806 KAR 017:370
411.32	806 KAR 017:370	441.510	501 KAR 002:060
415.174	907 KAR 003:170	441.560	501 KAR 007:090
415.184	907 KAR 003:170	446.010	501 KAR 006:250
416.120	921 KAR 002:015E		502 KAR 013:010
	921 KAR 002:015	446.030	030 KAR 005:031E
416.212	921 KAR 002:015E		030 KAR 005:031
	921 KAR 002:015	446.400	902 KAR 020:016
416.2030	921 KAR 002:015E	447.500-447.520	907 KAR 023:020E
	921 KAR 002:015		907 KAR 023:020
416.2095	921 KAR 002:015E	454.220	921 KAR 001:400E
	921 KAR 002:015		921 KAR 001:400
416.2096	921 KAR 002:015E	503.050	704 KAR 007:170
	921 KAR 002:015	503.070	704 KAR 007:170
416.2099	921 KAR 002:015E	503.110	704 KAR 007:170
	921 KAR 002:015	506	922 KAR 002:280
421.570	502 KAR 012:010	510.010-510.140	502 KAR 012:010
422.317	907 KAR 003:170	511	922 KAR 002:280
431.215	501 KAR 002:060	514	921 KAR 002:015E
431.300-431.307	907 KAR 003:170		921 KAR 002:015
431.600-431.660	040 KAR 003:020	515	922 KAR 002:280
434.757	301 KAR 001:018	520	922 KAR 002:280
434.840-434.860	907 KAR 003:170	524.140	502 KAR 012:010
434.845	921 KAR 001:020	525	922 KAR 002:280
438.310	782 KAR 001:010	527	922 KAR 002:280
439	501 KAR 006:030	527.100	922 KAR 001:310
	501 KAR 006:290		922 KAR 001:565
439.179	501 KAR 003:130	527.110	922 KAR 001:310
439.250	501 KAR 006:250		922 KAR 001:565

KRS SECTION	REGULATION	KRS SECTION	REGULATION
529	922 KAR 002:280	625.050-625.120	922 KAR 001:470
529.010	040 KAR 006:030		922 KAR 002:280
	502 KAR 012:010	7 C.F.R.	302 KAR 050:021
529.100	502 KAR 012:010		302 KAR 050:046
529.130	040 KAR 006:030		302 KAR 050:056
529.140	040 KAR 006:030		921 KAR 003:026E
529.150	040 KAR 006:030		921 KAR 003:027E
530	922 KAR 002:280		921 KAR 003:027
530.020	502 KAR 012:010		922 KAR 002:160E
530.064	502 KAR 012:010		922 KAR 002:160
531.310	502 KAR 012:010	16 C.F.R.	201 KAR 015:110E
532.043	501 KAR 001:050		201 KAR 015:110
532.060	501 KAR 002:020		922 KAR 001:310
	501 KAR 001:050	20 C.F.R.	907 KAR 017:005
532.100	501 KAR 002:020		907 KAR 020:001
	501 KAR 002:050		921 KAR 002:015E
	501 KAR 002:060		921 KAR 002:015
	501 KAR 002:070		922 KAR 002:160E
	501 KAR 003:130		922 KAR 002:160
	501 KAR 007:120		923 KAR 002:470
533.010	501 KAR 002:070	23 C.F.R.	603 KAR 010:011E
533.025	501 KAR 002:070		603 KAR 010:040E
533.200	013 KAR 003:020		603 KAR 010:040
533.210	013 KAR 003:020	24 C.F.R.	201 KAR 011:121
600.020	502 KAR 012:010	26 C.F.R.	105 KAR 001:390
	922 KAR 001:310	27 C.F.R.	804 KAR 014:011
	922 KAR 001:315	29 C.F.R.	101 KAR 002:102
	922 KAR 001:340		101 KAR 003:015
	922 KAR 001:360E		105 KAR 001:210
	922 KAR 001:360		803 KAR 002:321E
	922 KAR 001:470		803 KAR 002:321
	922 KAR 001:530		803 KAR 002:330E
	922 KAR 001:565		803 KAR 002:411
	922 KAR 002:160E		803 KAR 002:419
	922 KAR 002:160		803 KAR 002:426E
605	922 KAR 001:310		803 KAR 002:426
605.090	922 KAR 001:360E		803 KAR 002:445
	922 KAR 001:360		806 KAR 017:260
605.100	922 KAR 001:530		902 KAR 008:120
605.120	922 KAR 001:565		902 KAR 010:120
	922 KAR 002:160E		902 KAR 020:016
	922 KAR 002:160	34 C.F.R.	011 KAR 004:080
605.130	922 KAR 001:530		016 KAR 004:020
610.110	922 KAR 001:310		781 KAR 001:010
	922 KAR 001:340		781 KAR 001:020
	922 KAR 001:360E		781 KAR 001:030
	922 KAR 001:360		781 KAR 001:040
	922 KAR 001:565		781 KAR 001:050
615.020-615.990	922 KAR 001:310		782 KAR 001:010
620	902 KAR 020:016		902 KAR 030:120
620.020	201 KAR 020:320		922 KAR 002:160E
	907 KAR 017:005		922 KAR 002:160
	907 KAR 020:001	36 C.F.R.	300 KAR 006:010
	922 KAR 001:565		300 KAR 006:011E
	922 KAR 002:160E		300 KAR 006:011
620.020-620.050	040 KAR 003:020	39 C.F.R.	803 KAR 002:402
	922 KAR 002:160	40 C.F.R.	401 KAR 051:010
620.030	502 KAR 012:010		902 KAR 020:016
	906 KAR 001:180		902 KAR 048:010
	922 KAR 001:310		902 KAR 048:040
	922 KAR 001:315	42 C.F.R.	902 KAR 020:016
620.050	922 KAR 001:470		902 KAR 020:018
620.050-620.120	922 KAR 002:280		906 KAR 001:110
620.051	922 KAR 001:470		907 KAR 001:005
620.090	922 KAR 001:310		907 KAR 001:030
	922 KAR 001:565		907 KAR 001:082
620.140	922 KAR 001:310		907 KAR 001:104
	922 KAR 001:340		907 KAR 001:604
	922 KAR 001:565		907 KAR 003:170
620.142	922 KAR 001:565		907 KAR 010:815
620.170	922 KAR 001:530		907 KAR 010:830
	922 KAR 001:565		907 KAR 017:005
620.230	922 KAR 001:310		907 KAR 017:010
625	922 KAR 001:315		907 KAR 020:001

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	907 KAR 020:020	25 U.S.C.	922 KAR 002:160E
	907 KAR 023:020E		922 KAR 002:160
	907 KAR 023:020	26 U.S.C.	103 KAR 016:320
44 C.F.R.	201 KAR 011:121		105 KAR 001:330
45 C.F.R.	502 KAR 012:010		105 KAR 001:390
	806 KAR 017:470		301 KAR 004:091
	900 KAR 010:201	26 U.S.C.	921 KAR 001:020
	902 KAR 020:016		101 KAR 006:020E
	902 KAR 020:018		101 KAR 006:020
	902 KAR 020:081		804 KAR 014:011
	902 KAR 020:106	29 U.S.C.	101 KAR 001:345
	906 KAR 001:110		101 KAR 002:102
	907 KAR 001:030		101 KAR 003:015
	907 KAR 001:082		201 KAR 015:110E
	907 KAR 017:010		201 KAR 015:110
	921 KAR 001:020		781 KAR 001:010
	921 KAR 001:390		781 KAR 001:020
	921 KAR 001:400E		781 KAR 001:030
	921 KAR 001:400		781 KAR 001:040
	921 KAR 003:026E		781 KAR 001:050
	921 KAR 003:027E		787 KAR 002:040
	921 KAR 003:027		806 KAR 011:020
	921 KAR 004:116E		902 KAR 008:120
	921 KAR 004:116		907 KAR 001:082
	922 KAR 001:290		910 KAR 001:190
	922 KAR 001:310		922 KAR 002:160E
	922 KAR 001:530		922 KAR 002:160
	922 KAR 002:160E	31 U.S.C.	900 KAR 012:005E
	922 KAR 002:160		900 KAR 012:005
	922 KAR 002:280		921 KAR 001:020
49 C.F.R.	502 KAR 010:035	34 U.S.C.	502 KAR 012:010
	502 KAR 010:110		922 KAR 001:290
	502 KAR 010:120		922 KAR 002:160E
	791 KAR 001:060		922 KAR 002:160
59 C.F.R.	301 KAR 002:224		922 KAR 002:280
7 U.S.C.	302 KAR 050:021	38 U.S.C.	907 KAR 020:001
	302 KAR 050:031		922 KAR 002:160E
	302 KAR 050:046		922 KAR 002:160
	302 KAR 050:056	42 U.S.C.	011 KAR 015:090
	302 KAR 050:080		105 KAR 001:210
	921 KAR 003:026E		201 KAR 002:411E
	921 KAR 003:027E		201 KAR 002:412E
	921 KAR 003:027		201 KAR 006:040
	922 KAR 002:160E		300 KAR 006:010
	922 KAR 002:160		300 KAR 006:011E
8 U.S.C.	907 KAR 020:001		300 KAR 006:011
	921 KAR 002:015E		401 KAR 051:010
	921 KAR 002:015		502 KAR 031:020
	922 KAR 001:310		725 KAR 002:015
12 U.S.C.	201 KAR 011:121		787 KAR 001:310
15 U.S.C.	810 KAR 007:050		803 KAR 001:064
	902 KAR 010:120		806 KAR 017:370
16 U.S.C.	300 KAR 006:010		806 KAR 018:030
18 U.S.C.	502 KAR 013:010		900 KAR 010:201
	502 KAR 013:030		900 KAR 012:005E
	502 KAR 013:040		900 KAR 012:005
	502 KAR 013:050		902 KAR 020:016
	502 KAR 013:060		902 KAR 020:018
	502 KAR 013:080		902 KAR 020:081
20 U.S.C.	011 KAR 004:080		902 KAR 020:106
	016 KAR 004:020		906 KAR 001:110
	016 KAR 005:010		907 KAR 001:005
	702 KAR 001:140		907 KAR 001:082
	702 KAR 007:065		907 KAR 001:104
	782 KAR 001:010		907 KAR 001:604
	907 KAR 001:082		907 KAR 003:170
	921 KAR 003:026E		907 KAR 010:815
	921 KAR 003:027E		907 KAR 010:830
	921 KAR 003:027		907 KAR 017:005
21 U.S.C.	302 KAR 050:031		907 KAR 017:010
	902 KAR 002:230E		907 KAR 020:001
	907 KAR 001:082		907 KAR 020:020
23 U.S.C.	603 KAR 010:011E		907 KAR 023:020E
	603 KAR 010:040E		907 KAR 023:020

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	910 KAR 001:190		
	921 KAR 001:020		
	921 KAR 001:390		
	921 KAR 001:400E		
	921 KAR 001:400		
	921 KAR 002:015E		
	921 KAR 002:015		
	921 KAR 004:116E		
	921 KAR 004:116		
	921 KAR 004:122E		
	921 KAR 004:122		
	922 KAR 001:310		
	922 KAR 001:340		
	922 KAR 001:360E		
	922 KAR 001:360		
	922 KAR 001:470		
	922 KAR 001:530		
	922 KAR 001:565		
	922 KAR 002:160E		
	922 KAR 002:160		
	922 KAR 002:280		
	922 KAR 005:070		
45 U.S.C.	803 KAR 001:063		
	907 KAR 003:170		
49 U.S.C.	502 KAR 010:120		
52 U.S.C.	031 KAR 004:131E		
	031 KAR 004:131		
	031 KAR 004:141E		
	031 KAR 004:141		
	031 KAR 005:011E		
	031 KAR 005:011		
54 U.S.C.	300 KAR 006:011E		
	300 KAR 006:011		

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 004:060	09-03-2021	To be amended, filing deadline 03-03-2023
016 KAR 005:060	2/3/2022	To be amended, filing deadline 08-02-2023
016 KAR 02:120	01-03-2022	Remain in Effect without Amendment
101 KAR 002:105	04-28-2022	Remain in Effect without Amendment
101 KAR 002:106	04-28-2022	Remain in Effect without Amendment
101 KAR 002:160	04-28-2022	Remain in Effect without Amendment
200 KAR 005:365	03-29-2022	Remain in Effect without Amendment
200 KAR 014:011	03-29-2022	Remain in Effect without Amendment
200 KAR 014:081	03-29-2022	Remain in Effect without Amendment
200 KAR 015:010	03-29-2022	Remain in Effect without Amendment
200 KAR 040:010	03-29-2022	Remain in Effect without Amendment
200 KAR 040:020	03-29-2022	Remain in Effect without Amendment
201 KAR 002:030	6/23/2021	To be amended, filing deadline 12-23-2022
201 KAR 008:016	06-01-2021	To be amended, filing deadline 12-1-22
201 KAR 008:571	06-01-2021	To be amended, filing deadline 12-1-2022
201 KAR 009:450	02-23-2022	Remain in Effect without Amendment
201 KAR 009:460	02-23-2022	Remain in Effect without Amendment
201 KAR 014:040	06-03-2021	Remain in Effect without Amendment
201 KAR 014:050	06-03-2021	Remain in Effect without Amendment
201 KAR 014:060	06-03-2021	Remain in Effect without Amendment
201 KAR 014:065	06-03-2021	Remain in Effect without Amendment
201 KAR 014:085	06-03-2021	Remain in Effect without Amendment
201 KAR 014:115	06-03-2021	Remain in Effect without Amendment
201 KAR 020:450	07-15-2021	Remain in Effect without Amendment
201 KAR 028:010	04-15-2022	Remain in Effect without Amendment
201 KAR 028:030	04-15-2022	Remain in Effect without Amendment
201 KAR 028:070	04-15-2022	Remain in Effect without Amendment
201 KAR 028:130	04-15-2022	Remain in Effect without Amendment
201 KAR 028:140	04-15-2022	Remain in Effect without Amendment
201 KAR 028:220	04-15-2022	Remain in Effect without Amendment

Regulation Number	Letter Filed Date	Action
201 KAR 036:080	11-19-2021	Remain in Effect without Amendment
202 KAR 007:701	04-13-2022	Remain in Effect without Amendment
301 KAR 002:140	01-24-2022	Remain in Effect without Amendment
301 KAR 002:144	01-24-2022	Remain in Effect without Amendment
302 KAR 010:110	03-22-2022	Remain in Effect without Amendment
702 KAR 007:140	12-01-2021	Remain in Effect without Amendment
704 KAR 005:070	05-02-2022	Remain in Effect without Amendment
705 KAR 004:041	2/11/2022	Remain in Effect without Amendment
900 KAR 006:070	07-06-2021	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 030:001	6/15/2021	Remain in Effect without Amendment
902 KAR 030:110	6/15/2021	Remain in Effect without Amendment
902 KAR 030:120	6/15/2021	Remain in Effect without Amendment
902 KAR 030:130	6/15/2021	Remain in Effect without Amendment
902 KAR 030:150	6/15/2021	Remain in Effect without Amendment
902 KAR 030:160	6/15/2021	Remain in Effect without Amendment
902 KAR 030:180	6/15/2021	Remain in Effect without Amendment
902 KAR 030:200	6/15/2021	Remain in Effect without Amendment
902 KAR 055:045	07-06-2021	Remain in Effect without Amendment
902 KAR 055:090	07-06-2021	Remain in Effect without Amendment
902 KAR 100:010	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
907 KAR 015:040	03-28-2022	Remain in Effect without Amendment
907 KAR 015:075	2/11/2022	Remain in Effect without Amendment
908 KAR 002:220	12-28-2021	Remain in Effect without Amendment
908 KAR 002:230	12-28-2021	Remain in Effect without Amendment
908 KAR 002:260	12-28-2021	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

Regulation Number	Letter Filed Date	Action
908 KAR 015:045	03-28-2022	Remain in Effect without Amendment
909 KAR 015:050	03-28-2022	Remain in Effect without Amendment
910 KAR 001:140	11-17-2021	Remain in Effect without Amendment
910 KAR 001:180	07-23-2021	To be amended, filing deadline 01-23-2023
910 KAR 001:220	04-11-2022	Remain in Effect without Amendment
910 KAR 003:030	11-17-2021	To be amended, filing deadline 05-17-2023
910 KAR 015:055	03-28-2022	Remain in Effect without Amendment
911 KAR 001:085	11-29-2021	To be amended, filing deadline 05-29-2023
911 KAR 015:060	03-28-2022	Remain in Effect without Amendment
912 KAR 015:065	03-28-2022	Remain in Effect without Amendment
922 KAR 001:140	11-17-2021	Remain in Effect without Amendment
922 KAR 005:050	12-03-2021	Remain in Effect without Amendment
922 KAR 005:070	12-03-2021	To be amended, filing deadline 06-23-2023

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).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
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		
902 KAR 008:170	12-6-2021		
921 KAR 001:390	1-4-2022		
921 KAR 002:090	6-24-2021		
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		
922 KAR 001:510	11-23-2021		
922 KAR 002:190	6-24-2021		

SUBJECT INDEX

AGRICULTURE

Industrial Hemp

- Department's reports to the USDA; records retention for three years; 302 KAR 050:046
- Materials incorporated by reference; 302 KAR 050:080
- Procedures and policies for hemp growers; 302 KAR 050:021
- Procedures and policies for hemp processors and handlers; 302 KAR 050:031
- Sampling and THC testing; disposal of non-compliant harvests; post-testing actions; 302 KAR 050:056

AGING AND INDEPENDENT LIVING

Aging Services

- Nutrition program for older persons; 910 KAR 001:190
- Office of Dementia Services
- Alzheimer's and dementia services curriculum review and approval; 910 KAR 004:010

ALCOHOL AND DRUG COUNSELORS

- Supervision experience; 201 KAR 035:070

ALCOHOLIC BEVERAGE CONTROL

Advertising Distilled Spirits and Wine

- General advertising practices; 804 KAR 001:102

Licensing

- Alternating proprietorship agreements; 804 KAR 004:221
- Direct shipper license; 804 KAR 004:415
- In-State Distilled Spirits Supplier License; 804 KAR 004:212
- License surrender; 804 KAR 004:480
- Special temporary licenses; 804 KAR 004:251

Malt Beverages and Wine

- Brewing and winemaking for personal use; 804 KAR 014:011

Malt Beverage Equipment, Supplies and Service

- Growlers; 804 KAR 011:041

APPLIED BEHAVIOR ANALYSIS LICENSING BOARD

- Application procedures for licensure; 201 KAR 043:010
- Application procedures for temporary licensure; 201 KAR 043:020
- Code of ethical standards and standards of practice; 201 KAR 043:043
- Complaint and disciplinary process; 201 KAR 043:060
- Fees; 201 KAR 043:030
- Renewals; 201 KAR 043:080
- Repeal of 201 KAR 043:070; 201 KAR 043:071
- Requirement for supervision; 201 KAR 043:050
- Telehealth and telepractice; 201 KAR 043:100
- Voluntary inactive and retired status; 201 KAR 043:090

ARCHITECTS

- Continuing education; 201 KAR 019:087
- Qualifications for examination and licensure; 201 KAR 019:035

ATTORNEY GENERAL

Attorney General

- Standardized Open Records Request Form; 040 KAR 001:040

Kentucky Victim and Witness Protection Program

- Funding assistance from the child victims' trust fund; 040 KAR 006:020

- Human Trafficking Victims Fund; 040 KAR 006:030

- Kentucky Victim and Witness Protection Program; 040 KAR 006:010

BARBERING

- Apprentice license; qualifications; 201 KAR 014:050
- Barbering school enrollment and postgraduate requirements; 201 KAR 014:105
- Examinations; school and board; 201 KAR 014:115
- Fees; 201 KAR 014:180
- Inspection of shops and schools; 201 KAR 014:040
- Instructor requirements; 201 KAR 014:125
- Place of business requirements; 201 KAR 014:065
- Retaking of examination; 201 KAR 014:015

- Sanitation requirements; 201 KAR 014:085

- School equipment; plant layout; 201 KAR 014:110

- School records; 201 KAR 014:150

Behavioral Health, Developmental and Intellectual Disabilities

Institutional Care

- Patient's rights; 908 KAR 003:010

BOARDS AND COMMISSIONS

See also Occupations and Professions

See listing below for specific subject headings:

- Alcohol and Drug Counselors; 201 KAR Chapter 022

- Applied Behavior Analysis Licensing; 201 KAR Chapter 043

- Architects; 201 KAR Chapter 019

- Barbering; 201 KAR Chapter 014

- Chiropractic Examiners; 201 KAR Chapter 021

- Dentistry; 201 KAR Chapter 008

- Durable Medical Equipment; 201 KAR Chapter 047

- Embalmers and Funeral Directors; 201 KAR Chapter 015

- Examiners of Psychology; 201 KAR Chapter 026

- Licensure and Certification for Dietitians and Nutritionists; 201 KAR Chapter 033

- Licensure for Long-Term Care Administrators; 201 KAR Chapter 006

- Licensure for Massage Therapy; 201 KAR Chapter 042

- Medical Imaging and Radiation Therapy; 201 KAR Chapter 046

- Nursing; 201 KAR Chapter 020

- Pharmacy; 201 KAR Chapter 002

- Physical Therapy; 201 KAR Chapter 022

- Real Estate Commission; 201 KAR Chapter 011

- Speech-Language Pathology and Audiology; 201 KAR Chapter 017

- State Board of Accountancy; 201 KAR Chapter 001

Behavioral Health, Developmental and Intellectual Disabilities

Institutional Care

- 908 KAR 003:010. Patient's rights

CERTIFICATE OF NEED

Administration

- Child and adult protection employees subject to state and national criminal background checks; 900 KAR 001:050

Certificate of Need

- Application process; 900 KAR 006:065

- Certificate of Need nonsubstantive review; 900 KAR 006:075

- Expenditure minimums; 900 KAR 006:030

- Filing, hearing, and show cause hearing; 900 KAR 006:090

- Forms; 900 KAR 006:055

- Notification requirements; 900 KAR 006:110

- Standards for implementation and biennial review; 900 KAR 006:100

- Telehealth terminology and requirements; 900 KAR 012:005E

Guaranteed Acceptance Program (GAP)

- Guaranteed Acceptance Program (GAP) reporting requirements; 900 KAR 3:010

Kentucky Health Benefit Exchange

- Repeal of 900 KAR 010:200; 900 KAR 010:201

Office of Inspector General

- Essential personal care visitor programs; visitation guidelines; 900 KAR 014:010

State Health Plan

- State Health Plan for facilities and services; 900 KAR 005:020

Telehealth

- Telehealth terminology and requirements; 900 KAR 012:005

CHIROPRACTIC EXAMINERS

- Emergency orders; 201 KAR 021:054

- Licensing examination requirements; 201 KAR 021:070

- Minimum standards for recordkeeping or itemized statements; 201 KAR 021:100

- Pre-chiropractic education requirements; 201 KAR 021:090

- Seal; 201 KAR 021:035

COMMISSION ON FIRE PROTECTION PERSONNEL STANDARDS AND EDUCATION

Certification and qualifications of fire and emergency services instructors; 739 KAR 002:060

COMMUNITY BASED SERVICES

Child Welfare (922 KAR Chapter 001)

Daycare (922 KAR Chapter 002)

Supplemental Nutrition Assistance Program (921 KAR Chapter 003)

Adult Services

Adult protective services; 922 KAR 005:070

Child Care

Child Care Assistance Program; 922 KAR 002:160

Child Welfare

Background checks for private child-caring or child-placing staff members; 922 KAR 001:290

Central registry; 922 KAR 001:470

Post-adoption placement stabilization services; 922 KAR 001:530

Private child care placement, levels of care, and payment; 922 KAR 001:360

Service array for a relative or fictive kin caregiver; 922 KAR 001:565

Energy Assistance Program/Weatherization Standards for child-placing agencies; 922 KAR 001:310

Standards for child-placing agencies placing children who are not in the custody of the cabinet; 922 KAR 001:315

Standards for independent living programs; 922 KAR 001:340

Day Care

922 KAR 002:280. Background checks for child care staff members, reporting requirements, and appeals.

Energy Assistance Program/Weatherization

Assistance for low-income households with water or wastewater utility arrears Low Income Home Energy Assistance Program or "LIHEAP"; 921 KAR 004:122

Low Income Home Energy Assistance Program or "LIHEAP"; 921 KAR 004:116

Family Support

Child Support Enforcement Program; confidentiality, program administration contracts, and agreements; 921 KAR 001:020

Child Support Enforcement Program paternity establishment; 921 KAR 001:390

Five (5) year expiration of license; 201 KAR 014:030

medical support orders; 921 KAR 001:400

K-TAP, Kentucky Works, Welfare to Work, State Supplementation

Supplemental programs for persons who are aged, blind, or have a disability; 921 KAR 002:015

Supplemental Nutrition Assistance Program

Technical requirements; 921 KAR 003:027

CORRECTIONS

Class D and Class C Felons

Definitions for 501 KAR Chapter 2; 501 KAR 002:020

Procedures for housing of Class C and D felons; 501 KAR 002:060

Transfer requests; 501 KAR 002:050

Work release; 501 KAR 002:070

Kentucky Parole Board

Granting final discharge from parole; 501 KAR 001:050

Jail Standards for Full-service Facilities

Admission; searches and release; 501 KAR 003:120

Classification; 501 KAR 003:110

Classifications; 501 KAR 003:170

Hearings, procedures, disposition; 501 KAR 003:150

Prison programs; services; 501 KAR 003:130

Jail Standards for Restricted Custody Center Facilities

Admission; searches and release; 501 KAR 007:120

Classification; 501 KAR 007:110

Food services; 501 KAR 007:100

Medical services; 501 KAR 007:090

Personnel; 501 KAR 007:040

Prisoner programs; services; 501 KAR 007:130

Prisoner rights; 501 KAR 007:140

Security; control; 501 KAR 007:060

Training; 501 KAR 007:150

Office of the Secretary

Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders; 501 KAR 006:190

Comprehensive sex offender presentence evaluation procedure; 501 KAR 006:200

Graduated sanctions for technical violations of probation and compliance incentives system; 501 KAR 006:250

Kentucky State Reformatory; 501 KAR 006:030

Southeast State Correctional Complex; 501 KAR 006:290

Psychiatric or Forensic Psychiatric Facility Victim Notification System

Psychiatric or Forensic Psychiatric Facility Victim Notification System; 501 KAR 014:010

COSMETOLOGY

Education requirements and school administration; 201 KAR 012:082

CRIMINAL JUSTICE TRAINING

Concealed Deadly Weapons

Definitions for 503 KAR Chapter 4; 503 KAR 004:010

Required content and conduct of applicant training course; 503 KAR 004:050

Required instructor training; 503 KAR 004:040

General Training Provision

Law enforcement training course trainee requirements; misconduct; penalties; discipline procedures; 503 KAR 003:020

Telecommunications (Public Safety Dispatch) Academy graduation requirements; records; 503 KAR 003:050

Training charges; 503 KAR 003:030

Law Enforcement Foundation Program Fund

Definitions for 503 KAR Chapter 5; 503 KAR 005:080

Disbursement of salary supplement funds; audits; 503 KAR 005:100

DENTISTRY

Anesthesia and sedation related to dentistry; 201 KAR 008:550.

Fees and fines; 201 KAR 008:520.

Mobile dental facilities and portable dental units; 201 KAR 008:600

DEPARTMENT OF LAW

Medical Examination of Sexual Abuse Victims

Protocol for operation of local multidisciplinary teams on child sex abuse; 040 KAR 003:020

DISABILITY DETERMINATION SERVICES

Disability Determination

Disability Determinations Program; 923 KAR 002:470

DURABLE MEDICAL EQUIPMENT

Compliant and disciplinary process; 201 KAR 047:030

Home medical equipment and supplier licenses, requirements, and fees; 201 KAR 047:010

EDUCATION

See also: *Postsecondary Education (KAR Title 013)*

Alternative Education Programs

Alternative education programs; 704 KAR 019:002

General Administration

Annual in-service training of district board members; 702 KAR 001:116

District employee quarantine leave; 702 KAR 001:191

District employee quarantine leave; 702 KAR 001:192E

Face coverings in school facilities; 702 KAR 001:195E

Student records; hearing procedures; 702 KAR 001:140

Office of Chief State School Officer

Selection and Appointment of Non-Voting Kentucky Board of Education Members; 701 KAR 005:160

Office of Instruction

Extended school services; 704 KAR 003:395
Office of Learning Support Services
Corporal punishment; 704 KAR 007:170
Repeal of 704 KAR 007:120; 704 KAR 007:121
Personnel System for Certified and Equivalent Employees
Compensation plan; 780 KAR 003:020
School Administration and Finance
Depository of board, collateral; 702 KAR 003:090
School Terms, Attendance, and Operation
Designation of agent to manage middle and high school
interscholastic athletics; 702 KAR 007:065
Home or hospital instruction; 702 KAR 007:150
Pupil attendance; 702 KAR 007:125

EDUCATION PROFESSIONAL STANDARDS BOARD

Administrative Certificates
Assessment prerequisites for teacher certification; 016 KAR
006:010
Career and technical education school principals; 016 KAR
003:080
Dating of certifications; 016 KAR 004:050
Emeritus Certificate; 016 KAR 002:220
Endorsement for individual intellectual assessment; 016 KAR
003:070
Exception Certificate; 016 KAR 002:230
One (1) year conditional certificate; 016 KAR 002:180
Standards for accreditation of educator preparation providers
and approval of programs; 016 KAR 005:010
Certification Procedures
Certification requirements for teachers of exceptional children;
016 KAR 004:020
General Administration
Procedures for educator certificate surrender, revocation,
suspension, reinstatement, and reissuance, and for
application denial; 016 KAR 001:030
Teaching Certificates
Certificates for teachers of exceptional children/communication
disorders; 016 KAR 002:050
Interdisciplinary early childhood education, birth to primary; 016
KAR 002:040

EMBALMERS AND FUNERAL DIRECTORS

Apprenticeship and supervision requirements; 201 KAR
015:050
Examination; 201 KAR 015:040
Fees; 201 KAR 015:030
Funeral establishment criteria; 201 KAR 015:110
Surface transportation permit; 201 KAR 015:125

EMERGENCY MEDICAL SERVICES

Ground vehicle staff; 202 KAR 007:560
License classifications; 202 KAR 007: 545

EMPLOYMENT AND TRAINING; OFFICE OF

Employment Services
Local workforce development area governance; 787 KAR
002:040.

LABOR CABINET

Unemployment Insurance
Appeals; 787 KAR 001:110
Application for employer account; reports; 787 KAR 001:010
Change of status; discontinuance of business; 787 KAR
001:020
Claimant profiling; 787 KAR 001:310
Contract construction rates; 787 KAR 001:290
Employer contribution rates; 787 KAR 001:210
Interstate claimants; 787 KAR 001:150
Labor dispute or strike; notification; 787 KAR 001:080
Overpayment waivers; 787 KAR 001:360
Required reports and due dates; 787 KAR 001:220
Separation for cause; reports; 787 KAR 001:060
Successorship; 787 KAR 001:300
Unemployed worker's reporting requirements; 787 KAR

001:090
Unemployment insurance fund payments; 787 KAR 001:140
Voluntary election of coverage; 787 KAR 001:260

ENVIRONMENTAL PROTECTION

Attainment status designations; 401 KAR 051:010

EXECUTIVE BRANCH ETHICS COMMISSION

Standards of ethical conduct for transition team members and
disclosure form; 009 KAR 001:070

EXAMINERS OF PSYCHOLOGY

Change of license status; 201 KAR 026:270
Continuing education; 201 KAR 026:175
Employment of a psychological associate, a temporarily
licensed psychological associate, or temporarily licensed
psychologist; 201 KAR 026:250
Examinations and applications; 201 KAR 026:230
Definition of psychological testing; 201 KAR 026:115
Fee schedule; 201 KAR 026:160
Grievances and administrative complaints; 201 KAR 026:130
Health service provider designation; 201 KAR 026:125
Licensed psychologist: application and temporary license; 201
KAR 026:155
Nonresident status; 201 KAR 026:215
Renewal and reinstatement; 201 KAR 026:225
Requirements for granting licensure as a psychologist to an
applicant licensed in another state; 201 KAR 026:185
Requirements for supervised professional experience; 201
KAR 026:190
Telehealth and telepsychology; 201 KAR 026:310

FINANCE AND ADMINISTRATION

State-owned Buildings and Grounds
Use of state-owned facilities and grounds; 200 KAR 003:020

FISH AND WILDLIFE RESOURCES

Fish
Cedar Creek Lake; 301 KAR 001:019
Free fishing days; 301 KAR 001:210
Frog season; limits; 301 KAR 001:082
Harvest and sale of Asian carp; 301 KAR 001:152
Land between the Lakes provisions; 301 KAR 001:031
Live fish scales and handling; licensure; 301 KAR 001:120
Small state-owned lakes, special administrative requirements
of; 301 KAR 001:050
Special commercial fishing permit for Kentucky and Barkley
lakes; 301 KAR 001:140
Taking of fish by nontraditional fishing methods; 301 KAR
001:410
Taking of fish by traditional fishing methods; 301 KAR 001:201
Transportation of fish; 301 KAR 001:125
Use of boating access areas; 301 KAR 001:018
Use of lands and waters on lakes owned or controlled by the
department; 301 KAR 001:016
Game
Black bear seasons and requirements; 301 KAR 002:300
Crow hunting season; 301 KAR 002:260
Deer and turkey hunting on special areas; 301 KAR 002:111
Deer hunting seasons, zones, and requirements; 301 KAR
002:172
Elk hunting seasons, permits, zones, and requirements; 301
KAR 002:132
Feeding of wildlife; 301 KAR 002:015
Hunting and trapping seasons and limits for furbearers; 301
KAR 002:251
Importation of game birds; 301 KAR 002:084
Land between the Lakes hunting requirements; 301 KAR
002:050
Shooting areas, dog training areas, commercial foxhound
training enclosures, and bobwhite shoot-to-train season; 301
KAR 002:041
Shoot-to-retrieve field permits and procedures; 301 KAR
002:230

Spring wild turkey hunting; 301 KAR 002:142
 Waterfowl seasons and limits; 301 KAR 002:221.
 Waterfowl hunting zones; 301 KAR 002:224

Hunting and Fishing
 Access to Wildlife Management Areas for mobility-impaired individuals; 301 KAR 003:026
 Hunting and fishing method exemptions for disabled persons; 301 KAR 003:027
 Mobility-impaired hunts for deer, turkey and waterfowl; 301 KAR 003:110
 Public use of Otter Creek Outdoor Recreation Area; 301 KAR 003:012
 Public use of Wildlife Management Areas; 301 KAR 003:010
 Year-round season for wildlife; 301 KAR 003:030

Licensing
 Definitions for 301 KAR Chapter 5; 301 KAR 005:001
 Interstate Wildlife Violator Compact; 301 KAR 005:100
 Purchasing licenses and permits; 301 KAR 005:030

Water Patrol
 Boat dealers; 301 KAR 006:070
 Definitions for 301 KAR Chapter 6; 301 KAR 006:001

Wildlife
 Administration of drugs to wildlife; 301 KAR 004:110
 Ballard Wildlife Management Area restrictions; 301 KAR 004:020
 Buying and selling mounted wildlife specimens; 301 KAR 004:091
 Districts; 301 KAR 004:010
 Selection of Fish and Wildlife Resources Commission nominees; 301 KAR 004:001
 Scientific and educational collecting permits; 301 KAR 004:070
 Swan Lake Unit of Boatwright Wildlife Management Area; 301 KAR 004:050
 Peabody Wildlife Management Area use requirements and restrictions; 301 KAR 004:100

FOOD STAMPS

See *Supplemental Nutritional Assistance Program, 921 KAR Chapter 003*

HERITAGE COUNCIL

Historic rehabilitation tax credit certifications; 300 KAR 006:011

HORSE RACING COMMISSION

Flat and Steeplechase Racing
 Entries, subscriptions, and declarations; 810 KAR 004:030
 Horses; 810 KAR 004:010
 Objections and complaints; 810 KAR 004:060
 Running of the race; 810 KAR 004:040

Hearings and Appeals
 Hearings, reviews, and appeals; 810 KAR 009:010

Incentive and Development Funds
 Kentucky Horse Breeders' Incentive Fund; 810 KAR 007:050

Licensing
 Licensing of racing participants; 810 KAR 003:020

Medication Guidelines
 Drug, medication, and substance withdrawal guidelines; 810 KAR 008:025
 Medication; testing procedures; prohibited practices; 810 KAR 008:010

Pari-Mutuel Wagering
 810 KAR 006:001. Definitions for 810 KAR Chapter 006.

Standardbred Racing
 Claiming races; 810 KAR 005:030
 Entries and starters; 810 KAR 005:060
 Running of the race; 810 KAR 005:070

HOUSING, BUILDINGS AND CONSTRUCTION

Electrical
 Electrical inspections; 815 KAR 035:020

Elevator Safety
 Annual inspection of elevators, chairlifts, fixed guideway systems, and platform lifts; 815 KAR 004:010
 Permit and inspection fees for new and altered elevators,

chairlifts, fixed guideway systems, and platform lifts; 815 KAR 004:025
 Reporting incidents involving personal injury or death; 815 KAR 004:027

Hazardous Materials
 Certification of underground petroleum storage tank contractors; 815 KAR 030:060
 LP gas license; financial responsibility required; 815 KAR 030:010

Heating, Ventilation, and Air Conditioning Licensing Requirements
 Licensing requirements for master HVAC contractors and journeyman HVAC mechanics; 815 KAR 008:010

Kentucky Building Code
 Criteria for expanded local jurisdiction; 815 KAR 007:110
 Kentucky Building Code; 815 KAR 007:120
 Licensing of fire protection sprinkler contractors; 815 KAR 007:080

Plumbing
 Installation permits; 815 KAR 020:050
 Medical gas piping installations; 815 KAR 020:195

Standards of Safety
 Consumer fireworks retailer registration and fees; 815 KAR 010:070
 Kentucky standards of safety; 815 KAR 010:060

INFRASTRUCTURE AUTHORITY

Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program; 200 KAR 017:110

INSURANCE

Agents, Consultants, Solicitors and Adjustors
 Limited lines self-service storage space insurance requirements; 806 KAR 009:380
 Portable electronic retailer license; 806 KAR 009:390

Health Insurance Contracts
 Annual report on providers prescribing medication for addiction treatment; 806 KAR 017:590
 Certificate of filing for provider-sponsored networks; 806 KAR 017:100
 Conversion policy minimum benefits; 806 KAR 017:260
 Data reporting requirements; 806 KAR 017:240
 Data reporting to an employer-organized association health benefit plan; 806 KAR 017:470
 Definition of health care provider; 806 KAR 017:580
 Filing procedures for health insurance rates; 806 KAR 017:070
 Health benefit plan rate filing requirements; 806 KAR 017:150
 Independent External Review Program; 806 KAR 017:290
 Insurance purchasing outlet requirements; 806 KAR 017:450
 Life insurance and managed care; 806 KAR 017:350
 Minimum standards for short-term nursing home insurance policies; 806 KAR 017:085
 Pharmacy benefit managers; 806 KAR 017:575
 Provider agreement and risk-sharing agreement filing requirements; 806 KAR 017:300
 Registration, utilization review, and internal appeal; 806 KAR 017:280
 Repeal of 806 KAR 017:005, 806 KAR 017:095, 806 KAR 017:170, 806 KAR 017:180, and 806 KAR 017:510; 806 KAR 017:511
 Requirements regarding medical director's signature on health care benefit denials; 806 KAR 017:230
 Standardized health claim attachments; 806 KAR 017:370
 Telehealth claim forms and records; 806 KAR 017:270

Group and Blanket Health Insurance
 Group health insurance coordination of benefits; 806 KAR 018:030

Health Insurance Contracts
 Annual report mental health parity nonquantitative treatment limitation compliance; 806 KAR 017:585

Insurance Contract
 Minimum standards for the readability and intelligibility of insurance contracts; 806 KAR 014:121
 Kinds of Insurance; Limits of Risk; Reinsurance
 Credit for reinsurance; 806 KAR 005:025

Life Insurance and Annuity Contracts
Reporting and general requirements for settlement providers and brokers; 806 KAR 015:050
Motor Vehicle Repairs (No-fault)
Proof of motor vehicle insurance; 806 KAR 039:070
Surplus Lines
Surplus lines reporting and tax payment structure; 806 KAR 010:030
Trade Practices and Frauds
Advertising of accident and sickness benefits; 806 KAR 012:010
Unauthorized Insurers' Prohibitions, Process and Advertising
Multiple employer welfare arrangements; 806 KAR 011:020

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

CAP grant award determination procedure; 011 KAR 005:145
Definitions for 11 KAR Chapter 16; 011 KAR 016:001
Dual Credit Scholarship Program; 011 KAR 022:010
Early Childhood Development Scholarship Program applicant selection process; 011: KAR 016:010
Early Childhood Development Scholarship Program disbursement process; 011 KAR 016:020
Kentucky Educational Excellence Scholarship (KEES) Program; 011 KAR 015:090
Optometry Scholarship Program; 011 KAR 023:010
Student aid applications; 011 KAR 004:080

KENTUCKY RETIREMENT SYSTEMS

Employment after retirement; 105 KAR 001:390
Quasi-governmental employer reports on independent contractors and leased employees; 105 KAR 001:450

KENTUCKY STATE UNIVERSITY

Board of Regents
Procurement procedures; 745 KAR 001:035

LABOR CABINET

Administration
Employee access to or use of federal tax information; required criminal background check; 803 KAR 005:005

LAW ENFORCEMENT COUNCIL

Approval of course curriculums; 503 KAR 001:090
Career Development Program; 503 KAR 001:170
Certification of instructors; 503 KAR 001:100
Certification of schools; 503 KAR 001:080
Definitions for 503 KAR Chapter 1; 503 KAR 001:060
Department of Criminal Justice Training Basic training: graduation requirements; records; 503 KAR 001:110
Peace officer, telecommunicator, and court security officer professional standards; 503 KAR 001:140
Professional development in-service training: training requirements; recognized courses; records; 503 KAR 001:120

LIBRARIES AND ARCHIVES

Archives
Collection and distribution of reports and publications; 725 KAR 001:040
Recording and reproducing public records; 725 KAR 001:020
Records management program; 725 KAR 001:050
Records officers; duties; 725 KAR 001:010
Records retention schedules; authorized schedules; 725 KAR 001:061
Scheduling public records for retention and disposal; procedures; 725 KAR 001:030
Transfer of public records; 725 KAR 001:025
Libraries
Public library facilities construction; 725 KAR 002:015
Interstate Library Compact; 725 KAR 002:080

LICENSURE and CERTIFICATION FOR DIETITIANS AND NUTRITIONISTS

Application; approved programs; 201 KAR 033:015

LICENSURE FOR LONG-TERM CARE ADMINISTRATORS

Fees; 201 KAR 006:060
Other requirements for licensure; 201 KAR 006:020
Renewal, reinstatement, and reactivation of license; 201 KAR 006:040

LICENSURE FOR MASSAGE THERAPY

Application process, exam, and curriculum requirements; 201 KAR 042:035
Code of ethics and standards of practice for massage therapists; 201 KAR 042:061
Complaint procedure and disciplinary action; 201 KAR 042:050
Continuing education requirements; 201 KAR 042:110
Endorsement; 201 KAR 042:070
Fees; 201 KAR 042:020
Goals for massage therapy sessions; 201 KAR 042:010
Licensee's change of name, home address, or place of business; 201 KAR 042:030
Programs of massage therapy instruction; 201 KAR 042:080
Renewal and reinstatement; 201 KAR 042:040

LOTTERY CORPORATION

Procurement procedures; 202 KAR 003:020

MEDICAID SERVICES

Hospital Services Coverage and Reimbursement
Acute care inpatient hospital reimbursement; 907 KAR 010:830
Per Diem inpatient hospital reimbursement; 907 KAR 010:815
Managed Care
Definitions for 907 KAR Chapter 017; 907 KAR 017:005
Managed care organization requirements and policies relating to enrollees; 907 KAR 017:010
Medicaid Eligibility
Definitions for 907 KAR Chapter 020; 907 KAR 020:001
Income standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals; 907 KAR 020:020
Medicaid Services
Medicaid Services
Cost-sharing prohibited within the Medicaid program; 907 KAR 001:604
Coverage provisions and requirements regarding rural health clinic services; 907 KAR 001:082
Home health agency services; 907 KAR 001:030
Nonduplication of payments; 907 KAR 001:005.
Reimbursement for advanced practice registered nurse services; 907 KAR 001:104
Outpatient Pharmacy Program
Reimbursement for outpatient drugs; 907 KAR 023:020
Payments and Services
Telehealth service coverage and reimbursement; 907 KAR 003:170

MEDICAL EXAMINER

Duplicate records request fee schedule; 500 KAR 012:010

MEDICAL IMAGING AND RADIATION THERAPY

Continuing education requirements; 201 KAR 046:060
Fees; 201 KAR 046:020

NURSING

Applications for licensure; 201 KAR 020:370
Continuing approval and periodic evaluation of dialysis technician training programs; 201 KAR 020:474
Continuing approval and periodic evaluation of precensure registered nursing and licensed practical nursing programs; 201 KAR 020:360
Dialysis technician credentialing requirements for initial credentialing, renewal, and reinstatement; 201 KAR 020:476
Dialysis technician scope of practice, discipline, and miscellaneous requirements; 201 KAR 020:478
Fees for applications and for services; 201 KAR 020:240
Initial approval for dialysis technician training programs; 201

KAR 020:472
Licensure by endorsement; 201 KAR 020:110
Licensure of graduates of foreign nursing schools; 201 KAR 020:480
Licensure periods and miscellaneous requirements; 201 KAR 020:085
Nursing continuing education provider approval; 201 KAR 020:220
Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing; 201 KAR 020:260E
Repeal of 201 KAR 020:470; 201 KAR 020:471
Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs; 201 KAR 020:280

OCCUPATIONAL SAFETY AND HEALTH

See Workplace Standards, 803 KAR Chapter 2

OFFICE OF INSPECTOR GENERAL

Division of Health Care

Operation and services; personal services agencies; 906 KAR 001:180

PERSONNEL

Personnel Board

Appeal and hearing procedures; 101 KAR 001:365
Disciplinary actions; 101 KAR 001:345
Employee actions; 101 KAR 001:335
Employee grievances and complaints; 101 KAR 001:375
Probationary periods; 101 KAR 001:325
Promotion; 101 KAR 001:400
Restoration from military duty; 101 KAR 001:395
Standards of conduct and technology governing recording board proceedings; 101 KAR 001:367

Personnel Cabinet, Classified

2022 Plan Year Handbook for the Public Employee Health Insurance Program; 101 KAR 002:210
Applying for employment, qualifications and examinations; 101 KAR 002:046
Certification and selection of eligible applicants for employment; 101 KAR 002:066.
Classified leave general requirements; 101 KAR 002:102
Classified service general requirements; 101 KAR 002:095
Employee performance management system; 101 KAR 002:190

Personnel Cabinet, Unclassified

Leave requirements for unclassified service; 101 KAR 003:015

Personnel Cabinet, General

Kentucky Employees Charitable Campaign; 101 KAR 006:020

PHARMACY

Administration of vaccines; 201 KAR 002:420
Compounding; 201 KAR 002:076
Continuing education; 201 KAR 002:015
Emergency orders and hearings; 201 KAR 002:430
Examination; 201 KAR 002:020
Expungement; 201 KAR 002:270
Legend drug repository; 201 KAR 002:440
Licensed or permitted facility closures; 201 KAR 002:106
Licenses and permits; fees; 201 KAR 002:050
Naloxone dispensing; 201 KAR 002:360
Ordering and administering vaccinations; 201 KAR 002:412E
Pharmacy services in hospitals; 201 KAR 002:074
Special limited pharmacy permit- Medical gas; 201 KAR 002:225

PHYSICAL THERAPY

Code of ethical standards and standards of practice for physical therapists and physical therapist assistants; 201 KAR 022:053
Continued competency requirements and procedures; 201 KAR 022:045

Definitions for 201 KAR Chapter 022; 201 KAR 022:001
Eligibility and credentialing procedure; 201 KAR 022:020
Physical Therapy Compact Commission; 201 KAR 022:170.
Requirements for foreign-educated physical therapists and physical therapist assistants; 201 KAR 022:070

POSTSECONDARY EDUCATION

Adult Education and Literacy

GED eligibility requirements; 013 KAR 003:050
GED Incentives Program; 013 KAR 003:040
GED Testing Program; 013 KAR 003:010
High school equivalency diploma awarded for credit hour completion at Kentucky Community and Technical College Systems institutions; 013 KAR 003:060
Provision of instruction for individuals sentenced by a court to participate in educational programs; 013 KAR 003:020
Qualifications for progressing satisfactorily through a GED preparation program; 013 KAR 003:030

PUBLIC HEALTH

Communicable Diseases

COVID-19 antibody administration center; 902 KAR 002:230E
COVID-19 test acquisition and distribution; 902 KAR 002:240E
COVID-19 vaccine storage; 902 KAR 002:250E
Reportable disease surveillance; 902 KAR 002:020

Early Intervention System

Evaluation and eligibility; 902 KAR 030:120

Health Services and Facilities

Hospitals; operations and services; 902 KAR 020:016
Operation and services; ambulatory surgical center; 902 KAR 020:106
Operation and services; end-stage renal disease facilities; 902 KAR 020:018
Operations and services; home health agencies; 902 KAR 020:081

K-TAP, Kentucky Works, Welfare to Work, State Supplementation

Childcare standards for covering the face in response to declared national or state public health emergency; 902 KAR 002:213E

Lead Abatement

Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement; 902 KAR 048:030
Definitions for 902 KAR Chapter 48; 902 KAR 048:010
Lead-hazard abatement permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement; 902 KAR 048:040
Training and certification requirements for persons who perform lead-hazard detection or abatement; 902 KAR 048:020

Local Health Departments

Disciplinary procedures applicable for local health department employees; 902 KAR 008:100
Leave provisions applicable to employees of local health departments; 902 KAR 008:120
Salary adjustments for local health departments; 902 KAR 008:060

Maternal and Child Health

Newborn screening program; 902 KAR 004:030

Sanitation

Kentucky public swimming and bathing facilities; 902 KAR 010:120
On-site sewage disposal system installer certification program standards; 902 KAR 010:140.
Plan review, annual permitting, and inspection fees for public swimming and bathing facilities, including splash pads operated by local governments; 902 KAR 010:121
Splash pads operated by local governments; 902 KAR 010:190

PUBLIC SERVICE COMMISSION

Utilities

Access and attachments to utility poles and facilities; 807 KAR 005:015

REAL ESTATE COMMISSION

Standards of professional conduct; 201 KAR 011:121

RETIREMENT

See *Kentucky Retirement Systems (KAR Title 105)*
Teachers' Retirement System (KAR Title 102)

REVENUE

Ad Valorem Tax; State Assessment

Classification of property; public service corporations; 103 KAR 008:090

Income Tax; Corporations

Apportionment; receipts factor; 103 KAR 016:270

Claim of right doctrine; 103 KAR 016:320

Corporation income taxes policies and circulars; 103 KAR 016:352

Income Tax; Withholding

Payroll records; 103 KAR 018:090

Withholding return adjustment; 103 KAR 018:020

Sales and Use Tax; Miscellaneous Retailer Occupations

Motor vehicle body shops; 103 KAR 027:230

Sourcing of retail sales by florists; 103 KAR 027:050

Repairers and reconditioners of tangible personal property; 103 KAR 027:150

Sales and Use Tax; General Exemptions

Energy and energy-producing fields; 103 KAR 030:140

Interstate and foreign commerce; 103 KAR 030:190

Machinery for new and expanded industry; 103 KAR 030:120

Property used in the publication of newspapers; 103 KAR 030:25

Sales to farmers; 103 KAR 030:091

SECRETARY OF STATE

Address Confidentiality Program

Kentucky address confidentiality program; 030 KAR 006:011

Certifications

Certification of vacancy in nominations; 030 KAR 002:010

Corporations

Repeal of 30 KAR 1:010, 30 KAR 1:020, 30 KAR 1:040, and 30 KAR 1:050; 030 KAR 001:011

Implementation of Revised Article 9

Acceptance and refusal of records; 030 KAR 005:031

Definitions for 030 KAR Chapter 005; 030 KAR 005:011

Filing, indexing, and data entry procedures; 030 KAR 005:051

Filing methods and forms; 030 KAR 005:021

Search requests, reports, and copies; 030 KAR 005:060

UCC information management system; 030 KAR 005:041

Trademarks and Service Marks

Application for registration of trademarks and service marks; 030 KAR 003:010

Application for renewal of registration; 030 KAR 003:020

Classification of goods and services for registration of trademarks and service marks; 030 KAR 003:030

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

Telehealth and telepractice; 201 KAR 017:110

STATE BOARD OF ACCOUNTANCY

Examination sections, applications, and procedures; 201 KAR 001:190

STATE BOARD OF ELECTIONS

Forms and Procedures

Chain of custody for records during an election contest; 031 KAR 004:201

Consolidation of precincts and precinct election officers; 031 KAR 004:196

Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically; 031 KAR 004:131

Establishment of risk-limiting audit pilot program; 031 KAR 004:210

Exceptions to prohibition on electioneering; 031 KAR 004:170

Recanvas procedures; 031 KAR 004:071

Submission of the federal postcard application via electronic mail; 031 KAR 004:141

Statewide Voter Registration

Voting precinct and address of overseas voter whose last place of residence is in the Commonwealth is no longer a recognized residential address; 031 KAR 003:031

Voting

Ballot standards and election security; 031 KAR 005:026

Use of the federal writ-in absentee ballot; 031 KAR 005:011

STATE FAIR BOARD

Fairgrounds and Exhibition Center

Conduct and operation of concessions and exhibits; 303 KAR 001:075

Exhibition Center, dissemination of material; demonstrations; 303 KAR 001:090

Exposition Center, grounds; dissemination of material; demonstrations; 303 KAR 001:080

Exposition Center, grounds; sales and dissemination of real property, fixtures and goods, solicitation of contribution or sales during annual State Fair; rental of space; use of sound amplification equipment; 303 KAR 001:100

Procurement procedures; 303 KAR 001:110

Traffic flow; 303 KAR 001:015

Vehicle parking; 303 KAR 001:010

Vehicle speed; 303 KAR 001:005

STATE EMPLOYEES

See also: *Kentucky Retirement Systems (KAR Title 105)*

Personnel (KAR Title 101)

Teachers' Retirement System (KAR Title 102)

STATE POLICE

Automated Fingerprint Identification System

Provision and maintenance of automated fingerprint identification system equipment and programs in detention centers. Submission of fingerprints by jailers to the Kentucky State Police; 502 KAR 014:010

Candidate Selection

Appeals; 502 KAR 045:115

Application and selection process; 502 KAR 045:035

Appointment; 502 KAR 045:105

Aptitude examination; 502 KAR 045:045

Definitions; 502 KAR 045:005

Medical examination; 502 KAR 045:085

Qualifications; 502 KAR 045:015

Register; 502 KAR 045:075

Physical Fitness Test (PFT); 502 KAR 045:150

Concealed Deadly Weapons

Application for license to carry concealed deadly weapon; 502 KAR 011:010

License denial and reconsideration process; 502 KAR 011:060.

License revocation and suspension notice and reinstatement process; 502 KAR 011:070

Criminal History Record Information System

Arrest and disposition reporting procedure; 502 KAR 030:020

Audit of Criminal History Record Information System; 502 KAR 030:030

Definitions for 502 KAR Chapter 30; 502 KAR 030:010

Dissemination of criminal history record information; 502 KAR 030:060

Security of centralized criminal history record information; 502 KAR 030:050

Inspection of criminal history record information by record subject; 502 KAR 030:070

Driver Training

Commercial driver's license skill testing; 502 KAR 010:035

Contracts and agreements; 502 KAR 010:050

Definitions; 502 KAR 010:010

Department facilities; facility inspection; conflict of interest; 502 KAR 010:020

Instructor's license; 502 KAR 010:030

License suspension, revocation, denial; 502 KAR 010:080

Procedure for denial, suspension, nonrenewal or revocation

hearings; 502 KAR 010:090
 School advertising; 502 KAR 010:060
 Third-party CDL skills test examiner standards; 502 KAR 010:110
 Training school facilities; 502 KAR 010:040
 Training vehicle, annual inspection; 502 KAR 010:070
 Hazardous materials endorsement requirements; 502 KAR 010:120
General Traffic
 Traffic collision; 502 KAR 015:010
 Abandoned vehicles; 502 KAR 015:020
Kentucky Missing Child Information Center
 Capabilities of the Missing Child Information Center computer system; 502 KAR 035:020
 Definitions; 502 KAR 035:010
 Quality of information reported to the Kentucky Missing Child Information Center; 502 KAR 035:030
 Reporting of missing children by law enforcement agencies; 502 KAR 035:040
 Statistical analysis of information related to missing children; 502 KAR 035:050
Law Enforcement Officers Safety Act of 2004
 Application for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers; 502 KAR 013:010
 Change of personal information regarding certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 296C, for honorably retired elected or appointed peace officers; 502 KAR 013:060
 Incomplete application for certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 296C, for honorably retired elected or appointed peace officers; 502 KAR 013:080
 Issuance, expiration, and renewal of certification to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 296C, for honorably retired elected or appointed peace officers; 502 KAR 013:040
 Range qualification for certification under the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 926C, for honorably retired elected or appointed peace officers; 502 KAR 013:030
 Replacement of licenses to carry a concealed deadly weapon pursuant to the Law Enforcement Officers Safety Act of 2004 ("LEOSA"), 18 U.S.C. 296C, for honorably retired elected or appointed peace officers; 502 KAR 013:050
Law Information Network of Kentucky
 Law Information Network of Kentucky; 502 KAR 040:010
Medical Examiner Protocols
 Sexual assault forensic-medical examination protocol; 502 KAR 012:010
Methamphetamine
 Methamphetamine; 502 KAR 047:010
Polygraph
 Detection of deception examiners; 502 KAR 020:020
Sex Offender Registration System
 502 KAR 031:020. Sex Offender Registration System.
Trial Board Proceedings
 Admissibility of evidence; 502 KAR 050:010

TEACHERS' RETIREMENT SYSTEM

Disability benefits for members who enter on, or after, January 1, 2022; 102 KAR 001:360E

TEAM WESTERN KENTUCKY TORNADO RELIEF FUND

Team Western Kentucky Tornado Relief Fund; 800 KAR 001:020E

TRANSPORTATION

Billboards
 Advertising devices; 603 KAR 010:040

Repeal of 603 KAR 010:002, 010:010, and 010:021; 603 KAR 010:011E
Maintenance
 Noxious weeds and invasive plants to be eradicated from rights-of-way; 603 KAR 003:100
Motor Vehicle Commission
 Applications; 605 KAR 001:030
 Change of ownership; 605 KAR 001:071
 Dealer and salesman; 605 KAR 001:051
 Facilities requirements; 605 KAR 001:035
 Licensing fees; 605 KAR 001:215
 Motor vehicle dealership names; 605 KAR 001:091
 Motor vehicle advertising; 605 KAR 001:191
 Nonprofit motor vehicle dealer requirements and licensing; 605 KAR 001:211
 Procedures; 605 KAR 001:131
Right-of-way
 Logo sign panels; placement along fully controlled and partially controlled access highways; 603 KAR 004:035
Traffic
 Encroachment permits; 603 KAR 005:150
 Transportation Cabinet use of interstate and parkway signs to locate missing persons; 603 KAR 005:360

WORKERS' CLAIMS

Electronic data interchange vendor approval; 803 KAR 025:165
 Pharmacy; 803 KAR 025:092
 Utilization review, appeal of utilization review decisions and medical bill audit; 803 KAR 025:195
 Workers' compensation expedited hearings pursuant to occupational exposure to COVID-19; 803 KAR 025:305E

WORKFORCE INVESTMENT

Apprenticeship Standards
 Confidentiality of records of the Office of Employer and Apprenticeship Services; 787 KAR 003:020
Kentucky Commission on Proprietary Education
 Application for license for commercial driver license training school; 791 KAR 001:050
 Application for renewal of license for commercial driver license training school; 791 KAR 001:060
 Applications, permits, and renewals; 791 KAR 001:010
 Bond requirements for agents and schools; 791 KAR 001:150
 Commercial driver license training school curriculum and refresher course; 791 KAR 001:040
 Commercial driver license training school instructor and agency application and renewal procedures; 791 KAR 001:070
 Fees; 791 KAR 001:025
 Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver license training schools; 791 KAR 001:080
 Procedures for hearings; 791 KAR 001:030
 School closing process; 791 KAR 001:155
 School record keeping requirements; 791 KAR 001:027
 Standards for licensure; 791 KAR 001:020
 Standards for Kentucky resident commercial driver training school facilities; 791 KAR 001:100
 Student protection fund; 791 KAR 001:035
 Transfer of ownership, change of location, change of name, revision of existing programs; 791 KAR 001:160
Office for the Blind
 Certified driver training program; 782 KAR 001:070
 Kentucky Business Enterprises; 782 KAR 001:010
Office of Employment and Training
 Local workforce development area governance; 787 KAR 002:040
Office of Vocational Rehabilitation
 Carl D. Perkins Vocational Training Center; 781 KAR 001:050
 General provisions for operation of the Office of Vocational Rehabilitation; 781 KAR 001:020.
 Order of selection and economic need test for vocational rehabilitation services; 781 KAR 001:030
 Office of Vocational Rehabilitation appeal procedures; 781 KAR 001:010

Rehabilitation technology services; 781 KAR 001:040

WORKPLACE STANDARDS

Labor Standards; Wages and Hours

Board, lodging, gratuities and other allowances; 803 KAR 001:081
Employer-employee relationship; 803 KAR 001:006
Equal pay provisions, meaning and application; 803 KAR 001:026
Exclusions from minimum wage and overtime; 803 KAR 001:076
Executive, administrative, supervisory or professional employees; salesmen; 803 KAR 001:071
Hours worked; 803 KAR 001:065
Overtime pay requirements; 803 KAR 001:061
Recordkeeping requirements; 803 KAR 001:066
Trading time; 803 KAR 001:068
Workers with Disabilities and Work Activities Centers' employee's wages; 803 KAR 001:091

Occupational Safety and Health

Abatement; 803 KAR 002:122
Confined spaces in construction; 803 KAR 002:445
Contest of citation; 803 KAR 002:140
Cranes and derricks in construction; 803 KAR 002:440
Demolition; 803 KAR 002:419
Discrimination; 803 KAR 002:250
Employer and employee representatives; 803 KAR 002:110
Employer responsibility to post notice; 803 KAR 002:060
Employer responsibility when employee is exposed to toxic substances or harmful physical agents; 803 KAR 002:062
Failure to correct violation; 803 KAR 002:127
General industry standards; 803 KAR 002:325
General safety and health provisions; 803 KAR 002:402
Informal conference; 803 KAR 002:130
Inspections; 803 KAR 002:070
Medical services and first aid; 803 KAR 002:310
Pay during inspection activity; 803 KAR 002:230
Personal protective equipment; 803 KAR 002:308
Posting of citation; 803 KAR 002:125
Occupational exposure to COVID-19; 803 KAR 002:330E
Occupational health and environmental control; 803 KAR 002:321
Occupational health and environmental control; 803 KAR 002:306
Recordkeeping and reporting occupational injuries and illnesses; 803 KAR 002:181
Refusal to work when dangerous condition exist; 803 KAR 002:220
Repeal of 803 KAR 002:018; 803 KAR 002:011
Repeal of 803 KAR 002:040; 803 KAR 002:041
Repeal of 803 KAR 002:180; 803 KAR 002:182E
Scaffolds; 803 KAR 002:411
Stairways and ladders; 803 KAR 002:426
Variance and interim order; 803 KAR 002:170