



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, July 15, 2022.

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on August 9, 2022, at 1:00 p.m. in room 149 Capitol Annex.
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Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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



**Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Tuesday, August 9, 2022 at 1 p.m.
Annex Room 149**



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

STATE BOARD OF ELECTIONS

Statewide Voter Registration

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. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)

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. (Filed with Emergency)

Forms and Procedures

031 KAR 004:071E. Recanvas procedures. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)

031 KAR 004:071. Recanvas procedures. (Filed with Emergency)

031 KAR 004:131E. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)

031 KAR 004:131. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically. (Filed with Emergency)

031 KAR 004:141E. Submission of the federal postcard application via electronic mail. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)

031 KAR 004:141. Submission of the federal postcard application via electronic mail. (Filed with Emergency)

031 KAR 004:170. Exceptions to prohibition on electioneering.

031 KAR 004:196E. Consolidation of precincts and precinct election officers. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)

031 KAR 004:196. Consolidation of precincts and precinct election officers. (Filed with Emergency)

031 KAR 004:201E. Chain of custody for records during an election contest. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)

031 KAR 004:201. Chain of custody for records during an election contest. (Filed with Emergency)

031 KAR 004:210E. Establishment of risk-limiting audit pilot program. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)

031 KAR 004:210. Establishment of risk-limiting audit pilot program. (Filed with Emergency)

Voting

031 KAR 005:011E. Use of the federal writ-in absentee ballot. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)

031 KAR 005:011. Use of the federal writ-in absentee ballot. (Filed with Emergency)

031 KAR 005:026E. Ballot standards and election security. ("E" Expires 01-23-2023) (Filed with Ordinary) (Deferred from July)

031 KAR 005:026. Ballot standards and election security. (Filed with Emergency)

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101 KAR 002:066. Certification and selection of eligible applicants for employment. (Not Amended After Comments)

101 KAR 002:102. Classified leave general requirements. (Not Amended After Comments)

Personnel Cabinet, Unclassified

101 KAR 003:015. Leave requirements for unclassified service. (Deferred from July)

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

103 KAR 043:340E. Excise taxes on gasoline and special fuels; average wholesale price of gasoline and annual survey value. (Emergency Only) ("E" expires 02-27-2023)

Kentucky Retirement Systems

105 KAR 001:450E. Quasi-governmental employer reports on independent contractors and leased employees. (Filed with Ordinary) ("E" expires 01-30-2023) (Not Amended After Comments)

105 KAR 001:450. Quasi-governmental employer reports on independent contractors and leased employees. (Filed with Emergency)

BOARDS AND COMMISSIONS

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201 KAR 006:060. Fees.

Board of Architects

201 KAR 019:035. Qualifications for examination and licensure.

201 KAR 019:087. Continuing education.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Board of Emergency Medical Services

202 KAR 007:560. Ground vehicle staff. (Filed with Emergency)

TOURISM, ARTS AND HERITAGE CABINET

Heritage Council

300 KAR 006:011E. Historic rehabilitation tax credit certifications. (Filed with Ordinary) ("E" expires 01-24-2023) (Not Amended After Comments)

300 KAR 006:011. Historic rehabilitation tax credit certifications. (Filed with Emergency)

JUSTICE AND PUBLIC SAFETY CABINET

Department of State Police

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)

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Board of Education

General Administration

702 KAR 001:140. Student records; hearing procedures.

LABOR CABINET

Office of Unemployment Insurance

787 KAR 001:360. Overpayment waivers. (Filed with Emergency)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

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) (Emergency Amended After Comments) (Deferred from July)

PUBLIC PROTECTION CABINET

Department of Insurance

Health Insurance Contracts

806 KAR 017:585. Annual report mental health parity nonquantitative treatment limitation compliance.

Horse Racing Commission

Medication Guidelines

810 KAR 008:010. Medication; testing procedures; prohibited practices.

Hearings and Appeals

810 KAR 009:010. Hearings, reviews, and appeals.

Department of Housing, Buildings and Construction

Kentucky Building Code

815 KAR 007:120. Kentucky Building Code.

Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 008:010. Licensing requirements for master HVAC contractors and journeyman HVAC mechanics.

Standards of Safety

815 KAR 010:060. Kentucky standards of safety.

CABINET FOR HEALTH AND FAMILY SERVICES

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Administration

900 KAR 001:050. Child and adult protection employees subject to state and national criminal background checks.

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Department for Public Health Communicable Diseases

902 KAR 002:020. Reportable disease surveillance. (Filed with Emergency)

Maternal and Child Health

902 KAR 004:030. Newborn screening program.

Local Health Departments

902 KAR 008:060. Salary adjustments for local health departments.

902 KAR 008:100. Disciplinary procedures applicable for local health department employees.

902 KAR 008:120. Leave provisions applicable to employees of local health departments.

Sanitation

902 KAR 010:140. On-site sewage disposal system installer certification program standards.

Early Intervention System

902 KAR 030:120. Evaluation and eligibility. (Not Amended After Comments)

Department for Medicaid Services

Medicaid Services

907 KAR 001:082. Coverage provisions and requirements regarding rural health clinic services.

907 KAR 001:104. Reimbursement for advanced practice registered nurse services.

Outpatient Pharmacy Program

907 KAR 023:020E. Reimbursement for outpatient drugs. (Filed with Ordinary) ("E" expires 02-26-2023)

Department for Community Based Services

Child Welfare

922 KAR 001:290. Background checks for private child-caring or child-placing staff members.

922 KAR 001:310. Standards for child-placing agencies. (Amended After Comments)

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

922 KAR 001:340. Standards for independent living programs. (Amended After Comments)

3. REGULATIONS REMOVED FROM AUGUST'S AGENDA

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:015. Continuing education. (Comments Received; SOC ext. due by 08-15-2022)

Board of Dentistry

201 KAR 008:520. Fees and fines. (Deferred from July)

201 KAR 008:550. Anesthesia and sedation related to dentistry. (Comments Received; SOC ext. due 08-15-2022)

Real Estate Commission

201 KAR 011:121. Standards of professional conduct. (Comments Received; SOC ext. due 08-15-2022)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Department of Workforce Investment

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)

EDUCATION AND WORKFORCE DEVELOPMENT 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)

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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)

Department of Workers' Claims

803 KAR 025:195. Utilization review, appeal of utilization review decisions and medical bill audit. (Filed with Emergency) (Comments Received; SOC ext. due 08-15-2022)

PUBLIC PROTECTION CABINET

Department of Insurance

Health Insurance Contracts

806 KAR 017:350. Life insurance and managed care. (Deferred from October) (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. Other statutes or legislation may affect a regulation's actual end date.

STATEMENT OF EMERGENCY
16 KAR 9:110E

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. During the 2022 legislative session, the General Assembly passed House Bill 277 and the Governor signed it into law on April 8, 2022. This legislation, which is slated to become effective on July 14, 2022, amends KRS 161.048 to create the Option 9 alternative route to certification and gives the Education Professional Standards Board (EPSB) the authority to promulgate administrative regulations establishing the standards and procedures for the route. As there are only ninety-seven (97) days between the Governor signing this bill into law and its effective date, the ordinary administrative regulation process would not allow the EPSB time to promulgate an ordinary administrative regulation to be effective when the statutory change goes into effect. Therefore, the emergency regulation is necessary to establish the requirements for the Option 9 alternative route to certification when the statutory amendment goes into effect. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the Option 9 alternative route is expected to remain in statute. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
 JUSTIN MITCHELL, Chair

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(New Emergency Administrative Regulation)

16 KAR 9:110E. Expedited route to certification.

EFFECTIVE: July 13, 2022

RELATES TO: KRS 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 directs the Education Professional Standards Board (EPSB) to adopt administrative regulations establishing standards and procedures for the alternative routes to certification. This administrative regulation establishes the standards and procedures of the Option 9 expedited route to certification.

Section 1. Route Providers. (1) Expedited routes to certification shall be provided by a Kentucky public school district or group of districts in partnership with a college or university with an accredited educator preparation provider (EPP) recognized by the EPSB.

(2) The expedited route program shall only include the EPP's existing undergraduate initial certification educator preparation programs approved by the EPSB.

(3) Providers shall submit an application to the EPSB that includes:

(a) An agreement between the district or group of districts and the EPP to collaborate on the expedited route program.

(b) An understanding between the district and EPP that the expedited route program shall not negatively impact the accreditation of the EPP.

(c) Contact information for the EPP leader and the district or group of districts leader.

(d) Description of when the expedited route program is offered, the method of delivery and the certification areas included.

(e) A process to maintain regular communication between the employing school and EPP so that the EPP and employing school may assist the resident as needed and address identified areas of improvement.

(f) Explanation of how the district or group of districts in

cooperation with the EPP shall address the program requirements contained in Sections 2, 3 and 4 of this administrative regulation.

Section 2. Residency. (1) All candidates for the expedited route to certification shall meet the admission requirements established in 16 KAR 5:020.

(2) Candidates shall be employed in a classified position with the district while completing coursework from the EPP expedited route program.

(3) A resident shall not have responsibility for the supervision or instruction of P-12 students without the direct supervision of a certified educator.

(4) The district in consultation with the EPP shall ensure that the resident receives training on the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020.

(5) The resident shall adhere to the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020.

(6) The district shall provide coaching and mentoring of the resident throughout the program.

(7) If the district terminates the resident from classified employment, the EPP may transfer the resident to a traditional preparation program but the resident shall no longer be enrolled in the expedited route.

(8) Students wishing to transfer from another route to the expedited route shall be in good standing with their EPP.

(9) Students transferring to the expedited route shall be required to complete the field experience and student teaching outlined in Sections 3 and 4 of this administrative regulation.

Section 3. Field Experience. (1) During the first two (2) years of the residency, the district shall ensure that the candidate shall complete a minimum of two hundred (200) clock hours of field experiences in a variety of primary through grade 12 school settings which allow the candidate to participate in the following:

(a) Engagement with diverse populations of students which include:

1. Students from a minimum of two (2) different ethnic or cultural groups of which the candidate would not be considered a member;

2. Students from different socioeconomic groups;

3. English language learners;

4. Students with disabilities; and

5. Students from across elementary, middle school, and secondary grade levels;

(b) Observation in schools and related agencies, including:

1. Family Resource Centers; or

2. Youth Service Centers;

(c) Student tutoring;

(d) Interaction with families of students;

(e) Attendance at school board and school-based council meetings;

(f) Participation in a school-based professional learning community; and

(g) Opportunities to assist teachers or other school professionals.

(2) The district shall maintain and share with the EPP electronic records that confirm all residents have fulfilled the field experiences required in subsection (1) of this section.

Section 4. Student Teaching. (1) During the third year of the residency, the district shall provide opportunities for the student teacher to assume major responsibility for the full range of teaching duties, including extended co-teaching experiences, in a real school situation under the guidance of qualified personnel from the district and EPP. The EPP and the school district shall make reasonable efforts to place residents in settings that provide opportunities for the resident to develop and demonstrate the practical skills, knowledge, and professional dispositions essential to help all P-12 students learn and develop.

(2) The resident shall be placed in a setting that is consistent with his or her planned certification content and grade range.

(3) The placement shall provide the resident with the opportunity to engage with diverse populations of students.

(4) The third year of residency shall be in instructional settings that correspond to the grade levels and content areas of the resident's certification program. Specifically:

(a) Residents pursuing a primary through grade 12 certificate shall have their student teaching balanced between an elementary school placement and middle school or high school placement.

(b) Residents pursuing an elementary certificate shall have their student teaching balanced between a placement in primary through grade 3 and a placement in grade 4 or grade 5.

(c) Residents seeking dual certification in either middle school or secondary content areas shall have equal placements in both content areas.

(5) The district shall place the resident with a cooperating teacher or teachers who have:

(a) A valid teaching certificate or license for each grade and subject taught;

(b) At least three (3) years of teaching experience as a certified educator; and

(c) Completed the cooperating teacher training in Section 1 of 16 KAR 5:040.

(6) A teacher assigned to a teaching position on the basis of a provisional or emergency certificate issued by the EPSB shall not be eligible for serving as a cooperating teacher.

(7) The district or group of districts shall share with the EPP and file an electronic report with the EPSB which identifies the following:

(a) Each resident completing the third year;

(b) The resident's assigned school;

(c) The cooperating teacher assigned to each resident;

(d) The cooperating teacher's area of certification;

(e) The cooperating teacher's years of experience as a certified or licensed educator.

(8) The EPP shall assign a supervisor to the third-year resident. The supervisor shall conduct a minimum of four (4) observations of the resident in the actual teaching situation.

(9) The observations may be remote.

(10) The observation reports shall be filed as a part of the student teacher record and used as a validation of the supervisory function.

(11) The EPP supervisors shall be available to work with the resident and personnel in the district regarding any problems that may arise relating to the student teaching situation.

(12) The EPP supervisors shall complete the university supervisor training in Section 4 of 16 KAR 5:040.

(13) The district shall maintain and share with the EPP electronic records that confirm that all third-year residents meet the requirements of this section.

Section 5. Application Review. (1) Applications to provide an expedited route to certification shall be submitted to EPSB staff.

(2) EPSB staff shall complete an initial review to ensure that the application addresses the requirements of KRS 161.048(10) and this administrative regulation.

(a) If EPSB staff determines that the application addresses the requirements, it shall be forwarded to the EPSB for review at an EPSB meeting.

(b) If EPSB staff determines that the application does not address all the requirements, staff shall notify the provider of the deficiencies.

(3) The EPSB shall review the application, shall approve or deny each application, and shall transmit the decision and rationale for the decision to the provider.

(4) The provider may revise and resubmit a plan that has been denied.

(5) Any approval granted by the EPSB shall specify the period of approval, which shall not exceed three (3) years for initial approval. Providers may apply for an extension of approval as outlined in Section 6 of this administrative regulation.

Section 6. Continuance of Program Approval. (1) An expedited route provider may apply for continuance of an approved expedited route program for an additional period of time not to exceed seven (7)

years. The request for continuance shall specify any changes in program components that have occurred since the program received prior EPSB approval and that are planned for implementation in subsequent training periods.

(2) The request for continuance shall provide specific examples of demonstrating program quality. The request for continuance shall set forth statistical information related to teacher retention for all prior candidates who have completed the program. Standards for program approval and program quality specified under this administrative regulation shall be maintained under any program extension.

Section 7. Revocation for Cause. (1) If an area of concern or an allegation of misconduct arises after approval, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter for further investigation.

(3)(a) Notice of the EPSB's decision to refer the matter and the complaint shall be sent to the provider.

(b) Within thirty (30) days of receipt of the complaint, the provider shall respond to the allegations in writing and provide evidence pertaining to the allegations in the complaint to the EPSB.

(4)(a) Staff shall review any evidence supporting the allegations and any information submitted by the provider.

(b) Staff may conduct on-site evaluations to evaluate the quality of the programs.

(c) Upon completion of the review, staff shall issue a report recommending to the EPSB continued approval of the expedited route program or revocation of the expedited route program if it no longer meets the standards and requirements for approval.

(5) The provider shall receive a copy of staff's report and may file a response to the recommendation.

(6)(a) The recommendation from staff and the provider's response shall be presented to the EPSB.

(b) The EPSB shall consider the report and the provider's response and make a final determination regarding the approval of the institute.

Section 8. Appeals Process. (1) If a provider seeks appeal of an EPSB decision, the provider shall appeal within thirty (30) days of receipt of the EPSB official notification. A provider shall appeal on the grounds that:

(a) A prescribed standard was disregarded;

(b) A procedure was not followed; or

(c) Evidence of compliance in place at the time of the review and favorable to the provider was not considered.

(2) An appeals panel of no fewer than three (3) members shall be appointed by the EPSB chair from members of the EPSB who do not have a conflict of interest regarding the provider or program. The ad hoc committee shall recommend action on the appeal to the full EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.

Section 9. Data Reports. (1) The EPSB shall maintain data reports related to the following:

(a) Approval status of all EPSB approved expedited route programs;

(b) Contact information for the person responsible for the expedited route program;

(c) Year of last program review;

(d) Tables relating the program total enrollment disaggregated by ethnicity and gender for the last three (3) years;

(e) Tables relating the program faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;

(f) Table of the number of program completers for the last three (3) years;

(g) Table relating pass rates on the required assessments;

(h) Table relating program completer satisfaction with the preparation program; and

(i) Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.

(2) Providers shall report to the EPSB staff at the end of each

school year continuous improvement efforts relating to the expedited route program.

Section 10. Professional Certificate. (1) Upon completion of all program requirements of the expedited route, and compliance with the assessment requirements established in 16 KAR 6:010, the resident may apply for the professional certificate.

(2) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue the candidate a professional certificate.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: July 6, 2022

FILED WITH LRC: July 13, 2022 at 3:55 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 22, 2022, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 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 administrative regulation establishes the standards and procedures of the Option 9 expedited route to certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards and procedures for the Option 9 expedited route to certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.048(10) creates the Option 9 alternative route to certification and KRS 161.048(1)(e) requires the Education Professional Standards Board to promulgate administrative regulations establishing standards and procedures for the alternative certification options.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for providing an Option 9 alternative route to certification program as well as the requirements for candidates of the route to obtain certification.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, 31 Institutions of Higher Education with and approved educator preparation program,

and applicants for certification.

(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: School districts and educator preparation providers will have to meet the requirements of this regulation and apply to the Education Professional Standards Board to be approved to offer Option 9 programs. Candidates of this route will have to complete the program requirements and apply to the Education Professional Standards Board for Certification upon completion.

(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 fee established by the Education Professional Standards Board in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants to provide a Option 9 program will meet the requirements for approval by the Education Professional Standards Board. Candidates for this route will have access to high quality programs.

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

(a) Initially: The initial cost to implement this regulation will be the implementation of the route, training for staff on the standards and requirements for this new route, and the time and resources for processing and reviewing the applications to provide an Option 9 program. As this is a new route, we are unable to determine the number of applications that will be received.

(b) On a continuing basis: The continuing cost to implement this regulation will be the staff time and resources for processing applications to provide an Option 9 program and applications for certification from program completers. This is a new route, and it is unknown how many applications will be received.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund and certification fees collected pursuant to 16 KAR 4:040.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this time, it is not expected that an increase in fees or funding will be necessary for the Education Professional Standards Board to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

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 Education Professional Standards Board, public-school districts, and public institutions of higher education with approved educator preparation programs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.030, KRS 161.048.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 will not generate any revenue for the Education Professional Standards Board in the first year. This will not generate revenue for participating school districts but may generate revenue in the form of tuition for participating institutions of higher education.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Each applicant for certification through this route will have to pay the certification fee established in 16 KAR 4:040. This is a new route, so it is unknown how many applications will be received through it. Certification fees are a part of the Education Professional Standards Board's restricted funds, that in accordance with KRS 161.028 (1)(m) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder. In subsequent years, this will not generate revenue for participating school districts but may generate revenue in the form of tuition for participating institutions of higher education.

(c) How much will it cost to administer this program for the first year? For the first year, cost will be the implementation of the route, training for staff on the standards and requirements for this new route, and the time and resources for processing and reviewing the applications to provide an Option 9 program. As this is a new route, we are unable to determine the number of applications that will be received. There will also be development costs for the school districts and institutions of higher education. Those costs are not established by this regulation but are inherent in the statutory requirements of the route.

(d) How much will it cost to administer this program for subsequent years? For the subsequent years, the cost will be the staff time and resources for reviewing applications to offer an Option 9 program, overseeing the continuous review of providers, processing the applications for certification from route completers and issuing certificates. This will vary depending on the number of applications and certificates, and as this is a new route, we are unable to determine that number. There will also be ongoing costs to the districts to provide mentoring and support to candidates and to the institutions of higher education to offer the needed courses. These costs are not established by this administrative regulation but are inherent in the statutory requirements of the route.

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: At this time, it is unknown how many future educators will pursue this route. Applicants will be required to pay the certification fee established in 16 KAR 4:040. The certification fees collected for these applications will offset the costs of issuance. However, there will be costs to the Education Professional Standards Board for the development and oversight of this route prior to receipt of certification fees. There will also be costs to school districts and institutions of higher education wishing to participate in this route; however, those costs are not created by this regulation but are inherent to the route and its statutory requirements.

(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 anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None anticipated.

(c) How much will it cost the regulated entities for the first year? There will be initial costs to school districts and institutions of higher education wishing to participate in this route; however, those costs are not created by this regulation but are inherent to the route and its statutory requirements.

(d) How much will it cost the regulated entities for subsequent years? There will be costs to school districts and institutions of higher education wishing to participate in this route; however, those costs are not created by this regulation but are inherent to the route and its statutory requirements.

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)] There is not an expected major economic impact from this regulation as it does not create costs for the Education Professional Standards Board or the regulated entities.

STATEMENT OF EMERGENCY 105 KAR 1:415E

Pursuant to KRS 13A.190(1)(a)3., this emergency administrative regulation is being promulgated in order to allow the Kentucky Public Pensions Authority (KPPA) to begin receiving and processing requests for reimbursement of premiums paid by Medicare eligible retired members who were reemployed in a regular full-time position with a participating employer and were informed by the Kentucky Retirement Systems or the KPPA that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the KPPA from March 1, 2017 through September 30, 2022. The KPPA plans to start receiving and processing reimbursement requests from eligible retired members before the identical ordinary administrative regulation will complete the entire administrative regulation review process.

This emergency administrative regulation will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

DAVID EAGER, Executive Director

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

105 KAR 1:415E. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer.

EFFECTIVE: June 28, 2022

RELATES TO: KRS 16.505, 61.505, 61.510, 61.701, 61.702, 78.510, 78.5536, 42 U.S.C. 1395y(b)

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer group hospital and medical insurance coverage to retired members and some spouses and dependents. This administrative regulation establishes eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a regular full-time position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from March 1, 2017 through September 30, 2022.

Section 1. Definitions.

(1) Unless otherwise defined in this section, the definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this

administrative regulation.

(2) Prior to April 1, 2021, "agency" means the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "agency" means the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "Boards" means the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System.

(4) "Complete" means all required sections of a form are filled out, the form has been fully executed by the recipient or the recipient's legal representative, and all supporting documentation required by the form is included with the form.

(5) "Eligible spouse and dependents" means spouses and dependent children of MEMs who are eligible to receive all or a portion of their premiums paid for by the boards in accordance with KRS 61.702 and 78.5536.

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

(7) "MEM" means a Medicare-eligible member who is retired and reemployed in a regular full-time position with a participating employer which offers or offered the member a hospital and medical insurance benefit or by a participating employer which is or was prevented from offering a hospital and medical benefit to the member as a condition of reemployment under KRS 70.293, 95.022, or 164.952.

(8) "Monthly contribution rate" means:

(a) The amount determined by the boards as the maximum contribution the systems will pay toward the premium of a retired member who began participating in the systems on or before June 30, 2003; or

(b) For a retired member who began participating in the system on or after July 1, 2003, the amount per month earned by the retired member based on years of service as provided in KRS 61.702(4)(e) and 78.5536(4)(e).

(9) "Premium" means the monthly dollar amount required to provide hospital and medical insurance plan coverage for a recipient, spouse of a retired member, or dependent child.

(10) "Provide" when used in reference to a form or other document, means the agency makes a form or document available on its Web site (if appropriate) or makes a form or document available to a person by mail, fax, secure email, or via Self Service on the Web site maintained by the agency (if available).

(11) "Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

Section 2. Group Hospital and Medical Insurance Plans Established for MEMs. Beginning October 1, 2022, a KEHP group hospital and medical insurance plan is available for MEMs and the eligible spouses and dependents of MEMs in accordance with KRS 61.702, 78.5536 and 42 U.S.C. 1395y(b).

Section 3. Eligibility for Reimbursement.

(1) A MEM, who was informed by the agency that he or she was not eligible for group hospital and medical insurance plan coverage through the systems, and who paid premiums for a group hospital and medical insurance plan for himself or herself as well as his or her eligible spouse and dependent(s) may request reimbursement for those premiums paid during the time period from March 1, 2017 to September 30, 2022 as described in Section 4.

(a) MEMs are not eligible for reimbursement for any portion of premiums paid for themselves, spouses, and dependents on or after October 1, 2022, except as indicated in paragraph (b) of this subsection.

(b) For calendar year 2022 only, MEMs and eligible spouses and dependents of MEMs already enrolled in a hospital and medical insurance plan other than a KEHP group hospital and medical

insurance plan may choose to remain on that plan through December 31, 2022 and have his or her reimbursement eligibility period extended to December 31, 2022.

(2) Payment of premiums for a group hospital and medical insurance plan for MEMs and eligible spouses and dependents of MEMs identified in subsection (1) of this Section shall be reimbursed upon submission of documentation as described in Section 4 if all or a portion of the MEM, MEM's eligible spouse's or dependent's group hospital and medical insurance coverage would have been paid for by the Boards pursuant to KRS 61.702 and 78.5536.

(3) A MEM shall not be eligible for reimbursement of premiums paid by or on behalf of the MEM or his or her eligible spouse or dependent if:

(a) The MEM was not notified by the agency that he or she was ineligible for group hospital and medical insurance plan coverage through the agency, and

(b) The MEM voluntarily chose to purchase or enroll in a hospital and medical insurance plan not offered by the agency.

Section 4. Request for Reimbursement.

(1) The agency shall provide the Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, to eligible MEMs.

(2) A MEM may request reimbursement for himself or herself, eligible spouse or dependent(s) by filing Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, which shall include all premiums for the entire time period for which the MEM is requesting reimbursement.

(a) MEMs may begin filing Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, on August 1, 2022.

(b) MEMs shall only file one (1) Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, for each entity that provided hospital and medical insurance coverage for the MEM and his or her eligible spouses and dependents.

(c) Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement shall only be filed once MEMs and MEM's eligible spouse or dependents are no longer paying premiums eligible for reimbursement.

(3)(a) In order to receive the applicable reimbursement, MEMs must file the completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, with one (1) or more of the following proof of payment of premiums for hospital and medical insurance coverage that covers the entire time period for the requested reimbursement:

1. The employer certification of health insurance for medical reimbursement section of Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, completed by an employer to certify premiums paid by the MEM;

2. The insurance agent certification of health insurance for medical reimbursement section of Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, completed by an insurance agency or company to certify the premiums paid by or on behalf of the MEM;

3. A signed statement from the MEM's employer listing dates of hospital and medical insurance coverage amount of premiums deducted from wages and the cost of the single coverage; or

4. A signed statement or invoice from the MEM's insurance company listing the dates and cost of single hospital and medical insurance coverage, along with proof of payment such as a receipt or bank statement clearly indicating payment for the statement or invoice provided.

(b) If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

(4)(a) A completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, must be filed no later than June 30, 2023.

(b) MEMs and eligible spouses or dependents of MEMs for whom a completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, is not on file on or before June 30, 2023 are not eligible for reimbursement, except as provided by subsection (5) of this Section.

(5)(a) If a MEM submits a Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, by the deadline indicated in subsection (4) of this Section that is not complete, then the MEM shall have until December 31, 2023 to file a completed Form 6260, including any documentation or proof of payments for the time period the MEM is requesting reimbursement that were missing from the initial incomplete Form 6260.

(b) MEMs and eligible spouses or dependents of MEMs for whom a completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, is not on file on or before December 31, 2023 are not eligible for reimbursement.

(6)(a) If a MEM is deceased, the executor, administrator, or other representative of the MEM's estate may request reimbursement for the MEM, and any eligible spouse or dependents by filing a Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, and all other required documentation at the retirement office in compliance with this Section.

(b) The executor, administrator, or other representative of the MEM's estate shall also file an order appointing the executor, administrator, or other representative of the MEM's estate from a court with jurisdiction that has been entered by the clerk of the court or certified by the clerk of the court.

(7) If the last day to file a completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, under this Section is a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the deadline shall be satisfied if the completed Form 6260 is on file by the end of the next business day.

Section 5. Funding. Pursuant to KRS 61.701, fund assets shall be dedicated for use toward health benefits, as provided in KRS 61.702 and 78.5536, and as permitted under 26 U.S.C. 105 and 106 of the United States Internal Revenue Code, to retired recipients and employees of employers participating in the systems, including MEMs. Fund assets shall also be dedicated for use toward eligible spouses and dependents of MEMs health benefits as provided in KRS 61.702 and 78.5536. Fund assets shall be used to reimburse eligible MEMs and eligible spouses and dependents of the MEM.

Section 6. Authorized Payments.

(1) The agency shall reimburse premiums paid by a MEM or the spouse of a MEM for a MEM who meets the eligibility requirements of Section 3 of this administrative regulation and the MEM's eligible spouse and dependents for each month between March 1, 2017 and September 30, 2022, except as provided in subsection (2) of this section:

(a) That are included on a timely-submitted, completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, in compliance with Section 4; and

(b) Where documented proof of payment of premiums was filed in compliance with Section 4.

(2) In the case of MEMs who choose to remain on their current hospital and medical insurance plan through December 31, 2022 in accordance with paragraph (1)(b) of Section 3 of this administrative regulation, the agency shall reimburse premiums paid by a MEM or the spouse of a MEM for a MEM who meets the eligibility requirements of Section 3 of this administrative regulation and the MEM's eligible spouse and dependents for each month between March 1, 2017 and December 31, 2022:

(a) That are included on a timely-submitted, completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, in compliance with Section 4; and

(b) Where documented proof of payment of premiums was filed in compliance with Section 4.

(3) The amount the MEM or the estate of the MEM shall receive for each month of premium reimbursements authorized by subsection (1) or (2) of this Section shall be the lesser of:

(a) The monthly contribution rate in effect during the calendar year in which the premiums authorized for reimbursement were paid by the MEM or the spouse of the MEM had the MEM been eligible to enroll in the non-Medicare eligible group hospital and medical

insurance plan established in accordance with KRS 61.702 and 78.5536; or

(b) The premiums paid by the MEM or the spouse of the MEM for hospital and medical insurance coverage for the MEM and his or her eligible spouse and dependents.

(4)(a) The applicable monthly contribution rate referenced in paragraph (3)(a) of this Section shall be based on the MEM's hazardous and nonhazardous service.

(b) The applicable monthly contribution rate referenced in paragraph (3)(a) of this section shall not include the tobacco usage fee for the non-Medicare eligible group hospital and medical insurance plan.

(5)(a) If a MEM or an estate of a MEM receives a payment from the agency that does not qualify for reimbursement in accordance with this administrative regulation, the MEM shall return the payment to the agency at the retirement office.

(b) If the MEM or an estate of a MEM fails to return the payment, the agency may withhold payment or take other action to collect on the payment received in error.

Section 7. Incorporation by Reference. (1) Form 6260, "Medicare Secondary Payer Application for Medical Insurance Reimbursement", May 2022, 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, from 8:00 a.m. to 4:30 p.m. This material is also available on the agency's Web site at kyret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: June 24, 2022

FILED WITH LRC: June 28, 2022 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, August 23, 2022, at 10:00 a.m. Eastern Time 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 is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.NonAdvocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a full-time position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from March 1, 2017 through September 30, 2022.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit

premiums paid by Medicare eligible retired members who were reemployed in a full-time position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from March 1, 2017 through September 30, 2022.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer group hospital and medical insurance coverage to retired members and some spouses and dependents. This administrative regulation establishes eligibility requirements and procedures for reimbursements of premiums paid by Medicare eligible retired members who are or were reemployed in a regular full-time position with a participating employer during the period of March 1, 2017 through September 30, 2022, when a group hospital and medical insurance plan was not available for these retired members or their eligible spouses and dependents.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist in the effective administration of the statutes by establishing eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a regular full-time position with a participating employer and were previously informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from March 1, 2017 through September 30, 2022.

(2) If 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: Approximately 1100 individuals who are retired members of the systems operated by the Kentucky Public Pensions Authority. An unknown number of spouses and dependents of retired members of the systems operated by the Kentucky Public Pensions Authority. One (1) entity that provides day-to-day operations for the three (3) public retirement systems: the Kentucky Public Pensions Authority. Three (3) public retirement systems: the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Public Pensions Authority is required to set-up an internal system for processing and paying the eligible reimbursement requests provided by this administrative regulation. The Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System will be responsible for paying for the eligible reimbursements from the Kentucky Retirement Systems insurance trust fund (KRS 61.702).

(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 for the Kentucky Public Pensions Authority consists solely of the costs associated with implementation of this

administrative regulation, which should be minimal. The cost of compliance for the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System is unknown because the cost will be dependent on several factors that are unknown at the time of filing of this administrative regulation: (i) the number of eligible retired members who timely request reimbursement in accordance with this administrative regulation, (ii) the periods during which the affected retired members paid for premiums, and (iii) whether the affected retired members may have had their premiums partially or entirely paid for by an employer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Public Pensions Authority, the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System are able to ensure legal compliance.

(5) Provide an estimate of how much it will cost the administrative body 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 continuing costs associated with the implementation of this administrative regulation should be minimal, particularly after the window for requesting reimbursement closes on June 30, 2023.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority, which will carry out the implementation and enforcement of this regulation pursuant to KRS 61.505, 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: No increase in fees or funding is 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 public retirement systems are treated in the same manner by this administrative regulation.

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 Public Pensions Authority and the three (3) public retirement systems for which it provides day-to-day operations: the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g).

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

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

(d) How much will it cost to administer this program for subsequent years? Unknown.

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

Revenues (+/-): None.

Expenditures (+/-): Unknown.

Other Explanation: The cost of compliance for the Kentucky Public Pensions Authority consists solely of the costs associated with implementation of this administrative regulation, which should be minimal. The cost of compliance for the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System is unknown because the cost will be dependent on several factors that are unknown at the time of filing of this administrative regulation: (i) the number of eligible retired members who timely request reimbursement in accordance with this administrative regulation, (ii) the periods during which the affected retired members paid for premiums, and (iii) whether the affected retired members may have had their premiums partially or entirely paid for by an employer.

(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? Unknown.

(d) How much will it cost the regulated entities for subsequent years? Unknown.

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

Cost Savings (+/-): None.

Expenditures (+/-): Unknown.

Other Explanation: The cost of compliance for the Kentucky Public Pensions Authority consists solely of the costs associated with implementation of this administrative regulation, which should be minimal. The cost of compliance for the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System is unknown because the cost will be dependent on several factors that are unknown at the time of filing of this administrative regulation: (i) the number of eligible retired members who timely request reimbursement in accordance with this administrative regulation, (ii) the periods during which the affected retired members paid for premiums, and (iii) whether the affected retired members may have had their premiums partially or entirely paid for by an employer.

(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" because it will not have a negative or adverse economic impact on the Kentucky Public Pensions Authority or the three (3) public retirement systems for which it provides day-to-day operations (the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System).

STATEMENT OF EMERGENCY 200 KAR 17:111E

This emergency administrative regulation is being promulgated to immediately utilize American Rescue Plan (ARP) Act of 2021 federal funding appropriated by the Kentucky General Assembly to mitigate the fiscal effects stemming from the public health emergency with respect to the coronavirus (COVID-19) pandemic. The ARP Act authorizes states to make these necessary investments in water and wastewater infrastructure. This administrative regulation is being filed on an emergency basis to avoid an imminent threat to public health, safety, welfare, or the environment that investments in water and wastewater infrastructure prevent and to prevent an imminent loss of federal funds. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is

identical to this emergency administrative regulation. This emergency administrative regulation follows the United States Department of the Treasury issuing its final rule, effective April 1, 2022, for the American Rescue Plan Act, Coronavirus State & Local Fiscal Recovery Funds. Issuance of the final rule necessitates withdrawal of the existing emergency regulation and the promulgation of a new and substantially different emergency regulation, including eligible costs timelines and additional eligible water and sewer infrastructure investments.

ANDY BESHEAR, Governor

DENNIS KEENE, Chair

KENTUCKY INFRASTRUCTURE AUTHORITY (New Emergency Administrative Regulation)

200 KAR 17:111E. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.

EFFECTIVE: June 21, 2022

RELATES TO: KRS 45.031, 151.601, 151.605, 224A.011, 224A.020, 224A.035, 224A.040, 224A.050 -224A.314

STATUTORY AUTHORITY: KRS 224A.040, 224A.070(1), 224A.113, 224A.300

NECESSITY, FUNCTION, AND CONFORMITY: On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses. Effective April 1, 2022, the United States Department of the Treasury issued its final rule for the funds, which necessitates withdrawal of the existing emergency regulation and the promulgation of a new and substantially different emergency regulation. KRS 224A.040 authorizes the Kentucky Infrastructure Authority to make grants as funds are available, and KRS 224A.070(1) authorizes the Kentucky Infrastructure Authority to promulgate administrative regulations that shall define with specificity conditions precedent under which applications for loans or grants may be made and the order of priority upon which applications shall be acted upon. Senate Bill 36, 2021 Regular Session Acts of the General Assembly, Chapter 195, requires the authority to promulgate administrative regulations to ensure that project approvals are based on rational criteria and include a project's readiness to proceed and the project's social, economic, and environmental benefits. This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority.

Section 1. Definitions.

(1) "Applicant" means a governmental agency that has submitted an application to the authority for a grant from authority funds.

(2) "Application" means the project information contained within the Water Resource Information System Project Profile and designated by an applicant as applying for a grant from the Drinking Water and Wastewater Grant Program funds.

(3) "Authority" means the Kentucky Infrastructure Authority, which is created by KRS Chapter 224A.

(4) "Conditional commitment letter" means a letter delivered to the applicant stating the authority's commitment to provide a grant under specifications and subject to the satisfaction of certain conditions by the applicant.

(5) "Kentucky State Clearinghouse" means the project review mechanism, attached to the Department for Local Government, established in KRS 45.031.

(6) "Kentucky Uniform System of Accounting" means the elements of a basic accounting system established in KRS 224A.306, which is used by a water or wastewater system seeking

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or using funds of the authority if an alternative accounting system has not been approved by the authority.

(7) "Project" means an infrastructure project related to drinking water or wastewater.

(8) "Unserved" means a customer who does not have access to publicly available potable drinking water or a properly functioning wastewater system.

Section 2. Eligible Costs Timeline.

(1) Applicants may use funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the funds were incurred by the applicant after March 3, 2021.

(2) Applicants may use funds to cover eligible costs incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026.

Section 3. Eligible Projects.

(1) Funds available to the authority shall be used to fund projects that make necessary investments in water or sewer infrastructure as defined in 31 C.F.R. Part 35.

(2) Only water or wastewater projects addressing one (1) or more of the conditions established in paragraphs (a) through (h) of this subsection shall be eligible for funding:

(a) The proposed project shall provide drinking water services to unserved rural customers.

(b) The proposed project shall address provisions in a federal consent decree related to water or wastewater.

(c) The proposed project shall address the provisions of KRS 224A.300 - 224A.314.

(d) The proposed project shall address an emergency situation.

(e) The proposed project shall alleviate existing conditions that pose a serious and immediate threat to the health and welfare of the community.

(f) The proposed project shall promote social, economic, or environmental benefits; but with respect to industrial sites funds may only be awarded if the site has committed occupants.

(g) Funds are needed to complete a funding package previously awarded by the authority.

(h) Funds are needed to cover cost overrun for a project previously awarded by the authority.

(3) Project applications meeting the guidelines established in subsection (2) shall be funded based on the project's:

(a) Readiness to proceed;

(b) Social, economic, and environmental benefits; and

(c) Receipt of a project approval from a water management planning council as created in KRS 151.601.

Section 4. Applications.

(1) Each applicant shall submit an application to the authority by requesting that the water service coordinator, as established in KRS 151.605, designate the project for funding. If a water service coordinator is not available, the request may be made directly to the authority in writing and mailed.

(2) The authority shall request additional information about the project or the applicant if needed to comply with local, state, or federal laws.

(3) Only a completed application, including all supporting documentation, shall be considered for financial assistance from the Drinking Water and Wastewater Grant Program.

Section 5. Project Priority. Eligible projects shall be funded subject to:

(1) A project's readiness to proceed;

(2) A project's social, economic, and environmental benefits;

(3) The water management council's approval; and

(4) The availability of funds.

Section 6. Additional Conditions to Project Funding.

(1) A water supply and distribution system seeking funding for a project shall agree, in writing, to adopt and utilize the Kentucky

Uniform System of Accounting and to charge rates for services based on the actual cost of that service.

(2) Before funds shall be disbursed to an applicant whose project has been approved for funding, the applicant shall demonstrate to the authority that the project:

(a) Has been reviewed through the Kentucky State Clearinghouse process; and

(b) Is in compliance with applicable state and federal requirements.

Section 7. Terms of Financial Assistance.

(1) An application for funding shall be:

(a) Subject to financial viability review by authority staff; and

(b) Referred to the authority chair for final action.

(2) A project shall be funded if approved by the authority chair and reviewed by the Legislative Research Commission's Capital Projects and Bond Oversight Committee.

(3) Upon approval of an application for funding of a project, the authority shall issue a conditional commitment letter to the applicant establishing the requirements to be satisfied by the applicant prior to execution of an assistance agreement, including:

(a) Accounting standards or financial reporting conditions;

(b) Rate covenants;

(c) Other federal or state legal requirements relating to the project or the applicant;

(d) Engineering or technical requirements; and

(e) Receipt of additional funding commitments from other sources.

(4) Financial assistance by the authority shall be made available only upon:

(a) Execution of an assistance agreement; and

(b) Satisfaction by the applicant of the conditions established in the conditional commitment letter.

(5) A grant amount may be adjusted by up to ten (10) percent from the principal amount approved without further action if:

(a) Requested by an applicant; and

(b) The staff of the authority finds that:

1. The additional requested amount is needed for the project; and

2. Adequate funds are available.

(6) The Authority shall monitor the assistance agreements and require that financial reports be made available to the authority by the applicant.

(7) The authority may collect an administrative fee of one-half (1/2) of one (1) percent charged on the principal grant amount, as allowed by law. This fee shall be applied to the administrative processing servicing costs of the grants and necessary operating expenses of the program.

DENNIS KEENE, Chair

APPROVED BY AGENCY: June 21, 2022

FILED WITH LRC: June 21, 2022 at 12:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 25, 2022, at 10:00 a.m. at 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2022, at 11:59 p.m. 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: Matt Stephens, Executive Director, Department for Local Government, 100 Airport Road, 3rd Floor,

Frankfort, Kentucky 40601; phone 502-564-0318; fax 502-227-8691; email Matt.Stephens@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Matt Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority through the Drinking Water and Wastewater Grant Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance to applicants for grants, and to ensure that the application, review, and awarding of grants is in accordance with all applicable laws. The United States Department of the Treasury issued its final rule, effective April 1, 2022, necessitating the withdrawal of the existing emergency regulation and the promulgation of a new and substantially different emergency regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to Regular Session 2021 SB 36 and Regular Session 2022 HB 1, which provides guidelines for the grants, by incorporating its guidelines and definitions throughout.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will assist in the effective administration of the statutes by providing applicants with a consistent procedure for providing the statutorily required information needed to administer the grant program. It will also aid the Kentucky Infrastructure Authority (KIA) in its administration of the program by creating a written process to analyze potential Water and Wastewater Infrastructure projects requesting grant funds.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation and will not change any existing administrative regulation.

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

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

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All governmental agencies, including cities, and private sector entities seeking grant funds for the construction of Water and Wastewater Infrastructure in the Commonwealth will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As a result of this regulation, those governmental agencies and private sector entities will be provided guidance as to how to apply for state grant funds. In order to comply with the regulation, they will be required to provide documentation regarding their proposed construction or improvements required by legislation. This will require the submission of documents and may require advice from an accounting professional.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The expense for the administrative and financial expenses are estimated to be minimal and will only apply to those wishing to request funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to successful applicants are immeasurable. Access to clean drinking water and the treatment of wastewater will greatly improve quality of life for

Kentucky citizens and create a more suitable business environment for existing and potential job creators.

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

(a) Initially: The expense for the KIA initially will consist of creating new processes for analyzing grant applications. This may require new computer software and will certainly require the time of staff members.

(b) On a continuing basis: On a continuing basis, staff will continue to be utilized, and computer systems will need upgraded as needed.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of grant funding for this program is entirely federally funded.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: In order to implement this regulation, some additional fees and funding may be necessary. This funding will be for the creation of software and use of staff resources. It remains to be seen what that amount may be needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established by this regulation.

(9) TIERING: Is tiering applied? No tiering is applied. Pursuant to the relevant legislation, the funds will be appropriated to those projects based upon population, unserved rural customers, or local governmental agencies under consent decrees. In following that requirement, no tiering is necessary.

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 has the potential to impact all level of state and local government, including cities, counties, and special purpose governmental entities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation relates to providing grant money for the building of water and wastewater infrastructure. SB 36 requires 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. The effect to expenditures on state government include the administrative duties required by the Kentucky Infrastructure Authority. Those expenses should be minimal. The effect to revenues to local governments is indeterminable.

(a) How much 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 difficult to estimate the amount of revenue this administrative regulation will generate for state and local government for the first year since construction times are unknown. However, jobs can be assumed to be created relating to the construction of water and wastewater infrastructure. Also, this regulation allows local governments to be given construction costs for approved infrastructure projects. State government will receive benefits from any taxes as a result of infrastructure construction.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? In subsequent years, the construction and repair of water and wastewater infrastructure has the potential to create an unknown number of employment and educational opportunities. Access to proper water and wastewater infrastructure is considered to be necessary for any business venture. The potential for revenue is indeterminable.

(c) How much will it cost to administer this program for the first

year? The costs of this regulation for the first year will include the administrative expenses required in order to provide the necessary information to the Kentucky Infrastructure Authority.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the administrative costs will remain the same, but, since this is a voluntary program, those costs should be outweighed by the benefits.

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 have a substantial impact on expenditures, while having a cost savings for 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 have a substantial impact on expenditures, while having a cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cost savings for subsequent years are interminable. However, most entities will realize a cost saving for many years due to improved infrastructure.

(c) How much will it cost the regulated entities for the first year? The entities will have minimal administrative costs.

(d) How much will it cost the regulated entities for subsequent years? The entities will have minimal administrative cost in subsequent years.

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

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 will not have a negative or adverse major economic impact. This program will have a positive fiscal impact on state and local governments by providing employment opportunities and should lower expenses for providing clean drinking water and wastewater systems. The social and environmental impacts due to enhanced sanitation should have a positive fiscal impact as well. The expenditures by local governments will be funded by the federal grant money which is the subject of this regulation.

STATEMENT OF EMERGENCY 201 KAR 002:413E

This emergency administrative regulation establishes requirements that the Board of Pharmacy shall implement to comply with 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 52136 and 86 Fed. Reg. 9516, 10588 and 14462. 85 Fed. Reg. 15198, 52136 and 86 Fed. Reg. 9516, 10588, 14462 and 41977 have been promulgated in response to the public health emergency invoked by 42 U.S.C. 247d-6d to address COVID-19. This emergency administrative regulation is necessary, pursuant to KRS 13A.190(1)(a)3 and 4, to ensure continued compliance with federal law and to ensure that Kentucky continues to have an ample pool of pharmacists available to order and administer the COVID-19 vaccine. Without this emergency regulation, many Kentucky-licensed pharmacists will become ineligible to order and to administer the COVID-19 vaccine because they do not meet federal training requirements. So long as the state has a training requirement, compliance with the state

training requirement is sufficient to comply with federal law. Without this emergency administrative regulation, there is no state training requirement. This emergency administrative regulation will ensure that state law remains congruent with emergency federal regulations and responds to the current COVID-19 federal public health emergency. An ordinary administrative regulation is not a sufficient avenue to address the current emergency due to the COVID-19 pandemic being temporary. This emergency administrative regulation with regard to pharmacist authority will not be replaced by an ordinary administrative regulation due to the scope of the administrative regulation only existing and being needed for the duration of the federal public health emergency.

ANDY BESHEAR, Governor

CHRISTOPHER HARLOW, PharmD., Executive Director

BOARDS AND COMMISSIONS

Board of Pharmacy

(New Emergency Administrative Regulation)

201 KAR 002:413E. Ordering and administering vaccinations.

EFFECTIVE: June 27, 2022

RELATES TO: KRS 315.010, 315.020, 315.050, 315.065, 315.135, 315.205, 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 52136, 79190, 86 Fed. Reg. 7872, 9516, 10588, 14462 and 41977.

STATUTORY AUTHORITY: KRS 315.191

NECESSITY, FUNCTION, AND CONFORMITY: 85 Fed. Reg. 15198, 85 Fed. Reg. 52136 and 86 Fed. Reg. 9516, 10588 and 41977 require the Board of Pharmacy to promulgate an administrative regulation to conform state law to federal law during the period of this national public health emergency resulting from the coronavirus (COVID-19) pandemic. KRS 315.010(22) does not authorize pharmacists to order vaccinations nor does KRS 315.010(22) authorize the use of prescriber-approved protocols for pharmacists or pharmacist interns to administer vaccinations to children under the age of nine (9). 85 Fed. Reg. 52136, requires that state-licensed pharmacists be authorized to order and to administer vaccinations to children between the ages of three (3) and seventeen (17) and that state-registered pharmacist interns and pharmacy technicians be authorized to administer vaccinations to children between the ages of three (3) and seventeen (17). 85 Fed. Reg. 79190 requires that technicians be authorized to administer childhood vaccinations and COVID-19 vaccinations and requires that state law establish a training requirement for all pharmacists, technicians, and interns that will be ordering or administering vaccinations pursuant to the declaration. The Prep Act (42 U.S.C. 247d-6d(8)) preempts any state law that would prohibit or effectively prohibit activities authorized by the secretary in a PREP Act Declaration. This administrative regulation establishes requirements for Kentucky to comply with 85 Fed. Reg. 15198, 52136, 79190 and 86 Fed. Reg. 7872, 9516, 10588, 14462 and 41977 and ensures a robust pool of pharmacist for ordering and administering vaccines.

Section 1. Definitions.

(1) "Administer" is defined by KRS 315.010(1).

(2) "Pharmacist" is defined by KRS 315.010(17).

(3) "Pharmacist intern" is defined by KRS 315.010(18).

(4) "Pharmacy technician" is defined by KRS 315.010(21).

(5) "Prescribe" means to issue an original or new order from a pharmacist for an FDA-approved or authorized vaccination or medication, including but not limited to, epinephrine, diphenhydramine and corticosteroids to treat emergency reactions to vaccines.

Section 2. Pharmacist Requirements.

(1) A pharmacist may administer a vaccine to an individual pursuant to the Advisory Committee on Immunization Practices (ACIP) standard immunization schedule in accordance with KRS 315.010(22).

(2) A pharmacist may administer a vaccine to a child, age three (3) through eight (8), pursuant to a prescriber-approved protocol.

(3) A pharmacist may prescribe and administer a vaccine to an individual eighteen (18) and under, pursuant to the ACIP standard immunization schedule, a seasonal flu vaccine to any individual aged nineteen and over, a COVID-19 vaccine to any individual, and medications necessary for the emergency treatment of vaccine reactions, if the pharmacist:

(a) Completes or has completed practical training on administering vaccinations. This may include:

1. Completion of a practical training program from an education provider accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines;
2. Graduation from an ACPE accredited pharmacy school in which hands-on immunization training was part of the curriculum; or
3. Training via hands-on experience immunizing in current or previous pharmacy practice; and

(b) Possesses a current certificate in basic cardiopulmonary resuscitation.

(4) No provision in this regulation affects the ability of a pharmacist to administer a vaccination pursuant to a prescription drug order.

Section 3. Pharmacist Intern Requirements. A pharmacist intern under the general supervision of a pharmacist may administer a vaccine to an individual if the pharmacist intern:

(1) Completes, or has completed as part of pharmacy school curriculum, a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines; and

(2) Possesses a current certificate in basic cardiopulmonary resuscitation.

Section 4. Pharmacy Technician Requirements. A pharmacy technician may administer a vaccine under the general supervision of a pharmacist to an individual, if the pharmacy technician:

(1) Completes a minimum of two (2) hours of immunization-related continuing education accredited by the Accreditation Council for Pharmacy Education (ACPE) per each state registration period;

(2) Completes, or has completed, a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines; and

(3) Possesses a current certificate in basic cardiopulmonary resuscitation.

Section 5. Effective Date. (1) This administrative regulation shall become effective at 5 p.m. on the date it is filed.

(2) In accordance with KRS 13A.190, this administrative regulation shall remain in effect until:

- (a) Expiration of the time period established by KRS 13A.190; or
- (b) Withdrawn in accordance with KRS 13A.190(12).

(3) The Board of Pharmacy shall regularly consult with the Governor's Office, the Centers for Disease Control and Prevention, and other public health authorities to determine if this administrative regulation shall be withdrawn prior to its expiration under KRS 13A.190.

CHRISTOPHER P. HARLOW, PharmD., R.Ph., Executive Director
APPROVED BY AGENCY: June 27, 2022

FILED WITH LRC: June 27, 2022 at 3:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 31, 2022 at 10:00 a.m. Eastern Time at the Kentucky Department of Transportation Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be

heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation authorizes pharmacists to order and to administer vaccinations to individual three (3) and older, pursuant to specific requirements. This administrative regulation also authorizes pharmacy technicians and pharmacist interns to administer vaccinations to individuals three (3) and older, pursuant to specific requirements.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to comply with federal regulation and to ensure the health and safety of the citizens of the Commonwealth during the current national public health emergency. This administrative regulation is necessary to limit the training requirements for pharmacists so that the federal default training requirement is not imputed to Kentucky pharmacists. If that were to occur, the majority of Kentucky pharmacists would not be authorized to administer the COVID-19 vaccine.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.191 authorizes the Board of Pharmacy to promulgate regulations to regulate and control all matters relating to pharmacists, pharmacies, pharmacist interns and pharmacy technicians. This emergency regulation relates to pharmacist, pharmacist intern and pharmacy technician authority to order and administer vaccinations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow for vaccinations that are recommended by the Advisory Committee on Immunization Practices' (ACIP) standard immunization schedule, including COVID-19 vaccinations and seasonal flu vaccinations to be ordered and administered by a greater number of individuals.

(2) If 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 emergency administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new emergency administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new emergency administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new emergency administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation impacts any pharmacist, pharmacist intern or pharmacy technician that desires to order or administer vaccinations to individuals three (3) and up.

(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 requirement for pharmacists, pharmacist interns or pharmacy technicians to order or to administer vaccinations; however, this administrative regulation provides pharmacists with an authorization to order and to administer vaccinations pursuant to this administrative regulation's requirements and for pharmacy technicians and pharmacist interns with an authorization to administer vaccinations pursuant to this

administrative regulation's requirements. Should the pharmacist, pharmacist intern or pharmacy technician choose to order or to administer vaccinations, the pharmacist, pharmacist intern or pharmacy technician shall meet the conditions set forth in this regulation, including completing a training, being CPR certified and other conditions specifically enumerated.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation does not require pharmacists, pharmacist interns or pharmacy technicians to order or to administer vaccinations and therefore this administrative regulation does not create any cost to the potentially impacted individuals. However, should the pharmacist choose to order or to administer vaccinations or the pharmacist intern or pharmacy technician choose to administer vaccinations, those individuals will have the cost of training, potential yearly continuing education requirements and the cost of becoming CPR certified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The ability to vaccinate more individuals age three (3) and up. Not only will this improve vaccination rates, ensuring a healthier Commonwealth, but the qualified individuals ordering and administering the vaccination will potentially garner greater business as well as increased revenue streams for the companies or organizations in which they are employed.

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

(a) Initially: No cost to the administrative body.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board of Pharmacy will inspect pharmacies, pharmacist practice and pharmacist intern and pharmacy technician practices to ensure compliance with this administrative regulation. The Board of Pharmacy already employs inspectors, and this regulation will not increase any cost of enforcement for the Board of Pharmacy.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation does not mandate that any pharmacist, pharmacist intern or pharmacy technician order or administer vaccines, it simply provides an opportunity for those qualified individuals to do so if they choose.

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? There will be no impact on local or state government outside of the Board of Pharmacy's enforcement of the 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. 247d-6d, 85 Fed. Reg. 15198, 85 Fed. Reg. 52136, 86 Fed. Reg. 9516, 10588, 14462 and 41977.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on the expenditures and revenue of a state or local government agency.

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

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

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

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? There will be no impact on the expenditures or cost savings of regulated entities. The Board does not require any action in this regulation, it only permits action.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be no impact on the expenditures or cost savings of regulated entities. The Board does not require any action in this regulation, it only permits action.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will be no impact on the expenditures or cost savings of regulated entities. The Board does not require any action in this regulation, it only permits action.

(c) How much will it cost the regulated entities for the first year? There will be no impact on the expenditures or cost savings of regulated entities. The Board does not require any action in this regulation, it only permits action.

(d) How much will it cost the regulated entities for subsequent years? There will be no impact on the expenditures or cost savings of regulated entities. The Board does not require any action in this regulation, it only permits action.

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)] This administrative regulation will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 85 Fed. Reg. 52136, 86 Fed. Reg. 9516, 10588, 14462 and 41977. This is an emergency federal mandate only in effect during the federal declaration under the PREP Act.

(2) State compliance standards. Without this administrative regulation, the Commonwealth is not in compliance with the federal mandate. The federal regulation requires a stringent training program if the state does not have training requirements for the ordering and administration of vaccinations by pharmacists. This regulation sets forth the training requirements that are less stringent than the federal standards, ensuring that Kentucky licensed pharmacists remain eligible vaccinators.

(3) Minimum or uniform standards contained in the federal mandate. That pharmacists shall be authorized to order and to administer vaccinations to individuals ages three (3) and up and that pharmacist interns and technicians be authorized to administer vaccinations to individuals ages three (3) and up.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not

impose stricter requirements than the federal mandate. Rather, this administrative regulation will be more permissive than the federal mandate in that it allows for pharmacists to order and to administer vaccinations to all individuals three and older. It allows for pharmacists to order vaccines or to use prescription drug orders or prescriber-approved protocols. The conditions for pharmacists to be authorized to order and administer vaccinations are fewer in this administrative regulation than the federal mandate. Moreover, pharmacist interns have been authorized to administer vaccinations to individuals three and older. The conditions for pharmacist interns and technicians to administer vaccinations are fewer in this administrative regulation than the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. If this regulation were to mirror the federal regulations, it would have the effect of severely limiting the number of pharmacists that could order and administer vaccinations due to the majority of Kentucky pharmacists not having completed a twenty-hour training program on immunizing. Therefore, it was critical that federal floor standards be adopted, but with fewer conditions than the federal regulation.

STATEMENT OF EMERGENCY 201 KAR 12:030E

This emergency regulation is being promulgated under KRS 13.190(1)(a)1 to create compliance with SB 113 (R.S. 2022), which was signed into law by the General Assembly and the Governor in April of 2022 and becomes effective July 14, 2022. The implementation of SB 113 is imminent, and a regulatory schematic is necessary for compliance by the Kentucky Board of Cosmetology. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor
MARGARET MEREDITH, Board Chair

BOARDS AND COMMISSIONS Board of Cosmetology (Emergency Amendment)

201 KAR 12:030E. Licensing, ~~[permits,]~~ and examinations.

EFFECTIVE: July 12, 2022

RELATES TO: KRS 12.245, 317A.020, 317A.050, 317A.060, 317A.145

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing licenses in cosmetology, esthetic practices, and nail technology, including the operation of schools and salons of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes procedures for examinations and licensing.

Section 1. Fees. License ~~[and permit]~~ fees are set forth in 201 KAR 12:260.

Section 2. Changes. All changes to account information required for licensure shall be submitted to the board within thirty (30) days of occurrence including:

- (1) Legal name change;
- (2) Change of address;
- (3) Change of facility or employer;
- (4) Change of phone number;
- (5) Change of email address; and
- (6) Any other information as required by KRS 317A or 201 KAR Chapter 12 for licensure.

Section 3. Licensure Requirements. A license may be issued upon submission of the following:

- (1) All personal and facility licenses shall require an application for the following: an initial license, license renewal, license

restoration, an out-of-state transfer certification, or to request examination. These applications are found on the board's Web page;

(2) Diploma or certified testing documents proving 12th grade equivalency education for initial personal licensure or out-of-state transfers into Kentucky;

(3) A copy of a government-issued photo identification;

(4) Payment of the fee set forth 201 KAR 12:260;

(5) Resolution of any legal action associated with a prior disciplinary action as described in KRS 317A.145 if necessary;

(6) A current two (2) by two (2) inch passport-style photo taken within the past six (6) months; and

(7) Disclosure to the board of the current name and license number of the facility where the licensee is working.

Section 4. Prior Felony Convictions. An applicant for any license~~[, permit,]~~ or examination issued or conducted by the board convicted of a prior felony shall include with his or her application:

- (1) A signed letter of explanation from the applicant;
- (2) A certified copy of the judgment and sentence from the issuing court; and
- (3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.

Section 5. ~~[Section 3.]~~ Reciprocal Licensing.

(1) A license issued by another state ~~[shall]~~ may be considered comparable if the laws of that state require at a minimum:

- (a) 1,500 hours of curriculum for cosmetology;
- (b) 450 hours of curriculum for nail technology;
- (c) 750 hours of curriculum for esthetics;~~[-or]~~
- (d) 300 hours of curriculum for shampoo styling; or
- (e) ~~[(d)]~~ 750 hours of curriculum for instructors.

(2) An applicant licensed in another state may be licensed by reciprocity by submitting the Out of State Transfer Application and the following:

- (a) Digital certification showing proof of a passing score on a board-approved nationally recognized theory and practical exam;
- (b) Current digital certification of the out of state license from the issuing state board showing a license in active and good standing;
- ~~[(c) Diploma or certified testing documents proving 12th grade equivalency education;]~~

~~[(d)]~~ Payment of the applicable license and endorsement fees required by 201 KAR 12:260 unless a member of the United States Military, Reserves, or National Guard, or his or her spouse, or a veteran or the spouse of a veteran submitting the license fee [a] established in subsection (4)(d) of this section;

~~[(e) A copy of the applicant's government-issued photo identification; and~~

~~[(f) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.]~~

(3) An applicant from a state whose licensing requirements fail to meet subsection (1) of this section shall apply for a reciprocal license by submitting:

- (a) Documentation required by Section 3~~[subsection (2)]~~(a) through ~~(g)~~ ~~[(f)]~~ of this administrative regulation~~[section]~~; and
- (b) Payment of the applicable examination fees established in 201 KAR 12:260.

(4) Pursuant to KRS 12.245, a member of the United States Military, Reserves, or National Guard, or his or her spouse, or a veteran or the spouse of a veteran shall apply for a reciprocal license by submitting:

- (a) All documents required by Section 3~~[subsection (2)]~~(a)~~(b)~~ through ~~(g)~~ ~~[(f)]~~ of this [section]administrative regulation;
- (b) The Military Transfer Application;
- (c) A document showing proof of service, sponsor's service, or discharge orders listing the applicant or an accompanying family member as a member of the United States Armed Services;~~[-and~~
- ~~(d) Payment of a twenty-five (25) dollar license fee.]~~

(5) All requests for certification of hours or a license shall use the Certification Request Form accompanied by a copy of the applicant's government-issued photo identification and payment of the fee as set forth in 201 KAR 12:260. Certifications shall only be transmitted digitally to the reciprocal state agency.

Section 6.[Section 4.] Digital Forms. All applications and forms may be replicated and implemented by the board in an online format for processing, payment receipt, and license issuance.[Permits.

(1) Any person who engages in the practice of threading, makeup artistry, or eyelash artistry shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

(a) A copy of the applicant's government-issued photo identification;

(b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;

(c) Proof of completion of a board-approved sanitation course within the (1) year period preceding the application; and

(d) Proof of completion of a board-approved program, if applying for an eyelash artistry permit.]

Section 7.[Section 5.] Examination Registration.

(1) Applicants shall register using a school enrollment as follows:

(a) A student of a licensed cosmetology school shall register with the board at least eight (8) months prior to graduation;

(b) A nail technician student shall register with the board at least seventy-five (75)[forty-five (45)] days prior to graduation;[and]

(c) An esthetician student shall register with the board at least four (4) months prior to graduation; and

(d) A shampoo styling student shall register with the board at least fifty-three (53) days prior to graduation.

(2) A completed Application for Examination or Out of State Application for Examination shall be received in the Board office no later than ten (10) business days prior to the examination date to be scheduled for either the theory test or the practical demonstration component of the exam. Each exam component shall be scheduled using a separate application and payment of the fee set forth in 201 KAR 12:260.

~~[(3) All examination applicants shall submit a two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.]~~

~~[(3)][(4)]~~ Theory examination dates shall be valid for ninety (90) days from student notification.

~~[(4)][(5)]~~ A passing score for the theory examination, proper application, and payment of fees shall be required prior to being scheduled for the practical examination.

~~[(5)][(6)]~~ An applicant with curriculum hours obtained in another state shall include with the Out of State Application for Examination the following:

(a) Certification of curriculum hours from the state licensing board or agency where the hours were obtained, if the state requires the reporting of curriculum hours; or

(b) Certification of the valid licensing status of the school attended from the state board or licensing authority and an official transcript certified by the school.

~~[(6)][(7)]~~ Examination applicants shall wear a full set of solid color medical scrubs and bring all instruments and supplies as listed on the board Web site for the practical examination. White colored scrubs or other clothing is prohibited.

Section 8.[Section 6.] Examination Components.

(1) The examination shall consist of a theory test and a practical demonstration taken from the curriculum requirements specified in 201 KAR 12:082.

(2) The practical demonstration shall be performed on a:

(a) Mannequin head and hand for the cosmetology practical examination;

(b) Mannequin head for the esthetician or shampoo styling~~[blow drying]~~ services practical examination; or

(c) Mannequin hand for the nail technician practical examination.

(3) The applicant shall provide a mannequin head or hand as needed for an examination.

Section 9.[Section 7.] Grading.

(1) A minimum passing grade of seventy (70) percent on the theory test and the practical demonstration shall be required for the cosmetologist, esthetician, shampoo styling, and nail technician examinations

(2) A minimum passing grade of eighty (80) percent on the theory test and eighty-five (85) percent on the practical demonstration shall be required for all instructor examinations.

(3) All passing exam scores shall be valid for six (6) months from completion.

Section 10.[Section 8.] Practice before Examination Prohibited.
A student engaging in the practice of cosmetology, esthetic practices, shampoo styling, or nail technology beyond the scope of their registered school enrollment prior to the board examination shall be ineligible to take the examination for a period of one (1) year from the date of the unauthorized practice.

Section 11.[Section 9.] License Application.

(1) An applicant who passes the examination shall have ninety (90) days following the examination to apply for a license by complying with all requirements in Section 3(a) through (g) of this administrative regulation~~[submitting the License Application form and the following documentation:~~

~~(a) Diploma or certified testing documents proving 12th grade equivalency education;~~

~~(b) Payment of the applicable license fee required by 201 KAR 12:260;~~

~~(c) A copy of the applicant's government-issued photo identification; and~~

~~(d) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.]~~

(2) Failure to apply for a license as required by subsection (1) of this section shall require payment of the appropriate restoration and licensing fees set forth in 201 KAR 12:260 before a license may be issued.

~~[(3) An applicant may apply for an apprentice instructor license to be used for training in an approved program after one (1) year of professional licensing. Applicants shall submit the Apprentice Instructor License Application and provide the following documentation:~~

~~(a) Diploma or certified testing documents proving 12th grade equivalency education;~~

~~(b) Payment of the applicable license fee required by 201 KAR 12:260;~~

~~(c) A copy of the applicant's government-issued photo identification; and~~

~~(d) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.]~~

Section 12.[Section 10.] Retaking Examinations.

(1) Any applicant who fails either the theory test or the practical demonstration may retake that portion of the examination upon submitting a new Application for Examination with a two (2) by two (2) inch passport photo of the applicant taken within the preceding six (6) months, and paying the examination fee required by 201 KAR 12:260.

(a) After three (3) failed attempts, the examinee shall be required to wait six (6) months before retaking either portion of the examination. If the examinee does not receive a passing score ~~[after]~~on the third attempt, then the individual shall take an eighty (80) hour supplemental course in theory studies at a school licensed by the board prior to being eligible to retake the examination.

(b) Following the supplemental course, the examinee may attempt the examination two (2) additional times. If the examinee fails both attempts the examinee shall be prohibited from taking the examination within three (3) years from the date of the final failed attempt.

(2) An applicant caught cheating or impersonating another shall not be allowed to retake the examination for a minimum of one (1) year from the date of the original examination.

(3) Any applicant who fails to report for the examination on the date specified by the board shall submit a new examination application and examination fee prior to being rescheduled for

examination. The board may waive the examination fee for good cause shown. "good cause" includes:

(a) An illness or medical condition of the applicant that prohibits the applicant from reporting for the examination; or

(b) A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from reporting for the examination.

(4) Documents and certificates submitted with an Application for Examination are valid for one (1) year following the date of submission after which time applicants shall submit updated documents and a new examination application.

Section 13.~~[Section 14.]~~ Duplicate Licenses, Renewal, and Restoration.

(1) If a license is lost, destroyed, or stolen after issuance, a duplicate license may be issued. The licensee shall submit a statement verifying the loss of the license using the Duplicate License Application that includes a copy of a government-issued photo identification, and pay the duplicate license fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

(2) The annual license renewal period is July 1 through July 31. All licenses ~~[and permits]~~ shall renew by providing the required items in Section 3(a) through (g) of this administrative regulation.~~[-]~~

~~[(a) Be renewed using the Renewal Application or by using the board's online portal;~~

~~(b) Include the required copy of a government-issued photo identification;~~

~~(c) Include payment of the fee set forth 201 KAR 12:260; and~~

~~(d) Include payment of any outstanding fines associated with a prior disciplinary action as described in KRS 317A.145.]~~

(3) To restore an expired license~~[-or permit]~~, a Restoration Application shall be submitted to the board with payment of the restoration fee as set forth in 201 KAR 12:260 for each year the license has been expired, the total of which shall not exceed \$300 per license restored and by providing the required items in Section 3(a) through (g) of this administrative regulation.~~[-, along with the following:~~

~~(a) For an expired individual license or permit, a copy of a government-issued photo identification;~~

~~(a) [(b)] For an expired salon license or limited facility permit, a new Salon Application or Limited Facility [Permit] Application; or~~

~~(b) [(e)] For an expired school license, a new School Application.~~

Section 14.~~[Section 12.]~~ Salon and Limited Facility Applications.

(1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or limited facility shall submit the Salon Application or Limited Facility ~~[Permit] Application, provide the required items in Section 3(a) through (f) of this administrative regulation, [with required copies of state identification and driver's licenses, pay the applicable fee set forth in 201 KAR 12:260,]~~ and request an inspection by the board inspector in writing a minimum of five (5) business days prior to opening for business.

(2) A new or relocating salon or limited facility shall comply with all applicable city, county, state, zoning, building, and plumbing laws, administrative regulations, and codes.

(3) A salon or facility may be located on the premises of a nursing home or assisted living facility if the salon or facility meets all requirements of this section.

(4) Any salon or facility located in a residence shall have a separate outside entrance for business purposes only. This subsection shall not apply to a nursing home or an assisted living facility if the home or facility has obtained a salon license from the board.

(5) A salon or limited facility shall not open for business prior to issuance of its license~~[-or permit]~~.

(6) Each salon shall maintain a board licensed manager properly licensed in the services the salon provides at all times.

(7) Salon and limited ~~[beauty salon licenses and]~~ facility licenses~~[permits]~~ shall only be mailed to a [the] Kentucky mailing address [on the application.]

Section 15.~~[Section 13.]~~ Change in Salon Ownership or Transfer

of Interest.

(1) The owners, firm, or corporation operating a licensed salon shall submit to the board a new Salon Application, Limited Facility ~~[Permit] Application, or Manager Change Form, provide the required items in Section 3(a) through (f) of this administrative regulation, and~~ payment of the license or change fee as set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership.

(2) All manager changes shall be made with the board within ten (10) business days.

(3) No transfer of ownership interest in a salon shall take effect while the salon license to be transferred is the subject of ongoing disciplinary action pursuant to KRS 317A.145.

Section 16.~~[Section 14.]~~ School Licenses.

(1) Each person, firm, or corporation applying for a license to operate a school shall submit a School Application, provide the required items in Section 3(a) through (f) of this administrative regulation, and the applicable fee set forth in 201 KAR 12:260.

(2) The School Application shall be accompanied by:

(a) A proposed student contract listing all financial charges to enrolling students; and

(b) A proposed floor plan drawn to scale by a draftsman or architect.

(3) Each school shall comply with city, county, and state, zoning, building, and plumbing laws, administrative regulations and codes.

(4) Prior to license issuance and following the receipt of a completed application with all accompanying materials, the board inspector and executive director~~[board administrator]~~, or their designee shall conduct an inspection.

(5)(a) The inspection shall be completed within twelve (12) months of the date that the School Application and all accompanying materials are received unless the board extends the time period for good cause. "good cause" includes:

1. An illness or medical condition of the applicant that prohibits the applicant from completing the final preparations; or

2. A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from completing the final preparations.

(b) Requests for an extension of time shall be submitted in writing to the board and include the following:

1. The reason for the extension and the term of the request; and

2. Supportive documentation of the extension request.

(6) A license to operate a school shall be valid only for the location and person, firm, or corporate owner named on the application. A school license shall not be transferable from one (1) location to another or from one (1) owner to another.

(7) The school license shall contain:

(a) The name of the proposed school; and

(b) A statement that the proposed school may operate educational programs beyond secondary education.

(8) Each licensed school shall maintain a board licensed instructor as school manager at all times.

(9) All newly licensed schools shall provide proof of initial application for accreditation within two (2) years of license issuance and become accredited through a U.S. Department of Education approved cosmetology accreditation authority within five (5) years of license issuance. Enactment of this administrative regulation shall begin the timeline for all currently licensed schools.

(10) If accreditation requirements are not met in the required timeline the school license may be revoked.

Section 17.~~[Section 15.]~~ Change in School Ownership or Management.

(1) The owners, firm, or corporation operating a licensed school shall submit to the board a new School Application or a Manager Change Form and payment of the applicable fee set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership.

(2) All manager changes shall be made with the board within ten (10) business days.

(3) A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A and 201 KAR Chapter 12, and

obtain approval of the board prior to assuming operation of the school.

(4) A school shall not be opened under new ownership while the current owner still occupies the space.

(5) Written notice from current school owner including final closure date shall be provided to the board no less than ten (10) days prior to closure.

(6) All final student withdrawal and hours posting shall be required prior to new ownership licensing inspection being completed.

Section 18.~~[Section 14-]~~ Classification as School. Any person, establishment, firm, or corporation that accepts, directly or indirectly, compensation for teaching any subject of cosmetology as defined in KRS 317A.010 shall comply with KRS Chapter 317A and 201 KAR Chapter 12.

Section 19.~~[Section 17-]~~ Owner and Manager Student Prohibited. An owner, partner, stockholder, corporate officer, or a manager of a licensed school shall not be enrolled as a student in the school.

Section 20.~~[Section 18-]~~ Board Member Disclosure. A board member shall disclose to the board a financial interest in a salon or school when submitting an application for a salon or school license.

~~[Section 19. Demonstration Permits. Professional services performed outside a licensed facility shall have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.]~~

Section 21.~~[Section 20-]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Out of State Transfer Application", July 2022~~[April 2020]~~;

(b) "Military Transfer Application", July 2022~~[May 2020]~~;

(c) "Certification Request Form" July 2022~~[October 2018]~~;

(d) ~~["Permit Application", December 2019;]~~

~~(e) "Application for Examination", July 2022~~~~[June 2019]~~;

~~(e) [(f)] "Out of State Application for Examination", July 2022~~~~[October 2018]~~;

~~(f) [(g)] "License Application", July 2022~~~~[June 2019]~~;

~~(g) [(h)] "Apprentice Instructor License Application", June 2019;~~

~~(h) [(i)] "Duplicate License Application", July 2022~~~~[January 2019]~~;

~~(i) [(j)] "Renewal Application", July 2022~~~~[January 2019]~~;

~~(j) [(k)] "Restoration Application", July 2022~~~~[June 2019]~~;

~~(j) [(l)] "Salon Application", July 2022~~~~[June 2019]~~;

~~(k) [(m)] "Limited Facility [Permit-]Application", July 2022~~~~[April 2020]~~;

~~(l) [(n)] "Manager Change Form", July 2022~~~~[October 2018]~~; and

~~(m) [(o)] "School Application", July 2022~~~~[October 2018]~~; and

~~(p) "Demonstration Permit Application", October 2018.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARGARET MEREDITH, Chair

APPROVED BY AGENCY: July 1, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2022, at 9:30 a.m., at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for all examinations, licenses, and permits provided by the Kentucky Board of Cosmetology (KBC).

(b) The necessity of this administrative regulation: This amendment is necessary to establish the procedures to apply for examinations and licenses issued by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317A.050 requires KBC to issue licenses once certain statutory requirements are met. All applicants for any license type are required to submit the appropriate application for licensure. This administrative regulation conforms to KRS 317A.050 by establishing the content and supporting documentation necessary to apply for licensure. RS 22 SB 113 made changes creating the necessity or regulation amendments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides a specific process for any interested person to apply for a license to practice cosmetology, esthetics, shampoo and style, or nail technology in the Commonwealth, as well as facilities that educate and perform those 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: Amendment removes forms and details duplicated in other regulations for clarity and incorporates the requirements created in RS 22 SB 113.

(b) The necessity of the amendment to this administrative regulation: RS SB 113 created additional requirements for licensing and are addressed in this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides the necessary steps to apply for a license as authorized by KRS 317A.050.

(d) How the amendment will assist in the effective administration of the statutes: Through one concise administrative regulation, this amendment will facilitate the public's ability to apply for and receive the necessary examination and licensing to practice or teach cosmetology, esthetics, shampoo and style, or nail technology in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All students with finalized exam scores, approximately 5000 at any given time, are affected by this amendment as well as any current licensee - approximately 35,000 individuals at any given time 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: Students applying for a license will have to take additional action as a result of this amendment as will current licensees. Reporting of workplace allows more concise reporting on income and practice parameters. Required photographs help add a layer of security to reduce licensing fraud in the industry. These individuals were already required to submit an application pursuant to KRS 317A.050. This regulation merely states the documentation that had always been required to be submitted pursuant to the application instructions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no anticipated costs to the regulated entities due to this amendment.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): Additional safety for consumers by holding license holders accountable for safety issues and school standards.

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

(a) Initially: no additional cost involved

(b) On a continuing basis: no additional cost involved

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees will continue to support agency and enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees will be required for licensing. Fees are all set in 201 KAR 12:260.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not set in this regulation and no new fees were created in this regulation.

(9) TIERING: Is tiering applied? Tiering does not occur in the agency. Operation is strictly from restricted licensing fees.

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? No additional agencies are affected by this regulation amendment. KBC is the only entity impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A is the prevailing statute providing authority to KBC. No federal oversight exists.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No revenues or expenditures will be necessary for other agencies.

(a) How much 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 or expenditures will be necessary for other agencies.

(b) How 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 revenues or expenditures will be necessary for other agencies.

(c) How much will it cost to administer this program for the first year? No revenues or expenditures will be necessary for other agencies.

(d) How much will it cost to administer this program for subsequent years? No revenues or expenditures will be necessary for other agencies.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: 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. No revenues or expenditures will be necessary for other agencies.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No revenues or expenditures will be necessary for other agencies.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No revenues or expenditures will be necessary for other agencies.

(c) How much will it cost the regulated entities for the first year? No revenues or expenditures will be necessary for other agencies.

(d) How much will it cost the regulated entities for subsequent years? No revenues or expenditures will be necessary for other agencies.

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

Cost Savings (+/-): N/A

Expenditures (+/-): N/A

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)] There is no major economic impact to any agency.

STATEMENT OF EMERGENCY 201 KAR 12:060E

This emergency regulation is being promulgated under KRS 13.190(1)(a)1 to create compliance with SB 113 (R.S. 2022), which was signed into law by the General Assembly and the Governor in April of 2022 and becomes effective July 14, 2022. The implementation of SB 113 is imminent, and a regulatory schematic is necessary for compliance by the Kentucky Board of Cosmetology. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor

MARGARET MEREDITH, Board Chair

BOARDS AND COMMISSIONS Board of Cosmetology (Emergency Amendment)

201 KAR 12:060E. Inspections.

EFFECTIVE: July 12, 2022

RELATES TO: KRS 317A.060, 317A.140

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060

requires the board to promulgate administrative regulations governing the operation of any schools, limited facilities, and salons of cosmetology, nail technology, threading, eyelash artistry, makeup artistry, [and] esthetics, and to protect the health and safety of the public. This administrative regulation establishes inspection and health and safety requirements for all schools and salons of cosmetology, nail technology, threading, eyelash artistry, makeup artistry, and esthetics.

Section 1. Public Display.

(1)(a) Each licensee or permit holder shall attach his or her picture to the license or permit and place it in an accessible and conspicuous area in the salon, limited facility, or school.

(b) Each licensed facility's license shall be posted in an accessible and conspicuous area with the information required by this subsection.

(2) A conspicuous area shall be visible to the public and shall include:

(a) The main entrance door or window of the premises; and

(b) The workstation of the employee.

(3) A salon or school manager shall have the manager's license posted with a picture in an accessible and conspicuous area at all times.

(4) A school shall, at all times, display in a centralized and accessible conspicuous public place the student permits of all students enrolled.

(5) Each licensed salon, limited facility, or school shall post the most recent inspection report in an accessible and conspicuous area.

Section 2. Inspections.

(1) Any board member, administrator, or inspector may enter

any establishment licensed by this board or any place purported to be practicing cosmetology, nail technology, threading, eyelash artistry, makeup artistry, or esthetics, during reasonable[normal] working hours or at any time when the establishment is open to the public, for the purpose of determining if an individual, salon, limited facility, or school is complying with KRS Chapter 317A and 201 KAR Chapter 12.

(2) A board member, administrator, or inspector may require the licensee or permittee to produce for inspection and copying books, papers, or records required by the board or pertaining to licensed activity.

(3) Each establishment licensed by the board shall be inspected a minimum of two (2) times per year.

(4) A salon, limited facility, or school shall schedule an inspection of the salon, limited facility, or school after an inspector twice attempts, but is unable, to inspect the salon or school.

(5) Failure of the salon, limited facility, or school owner or manager to schedule an inspection within thirty (30) days of two (2) consecutive failed inspection attempts shall constitute unprofessional conduct.

(6) The owner and manager of each establishment licensed by the board shall be responsible for compliance with KRS Chapter 317A and 201 KAR Chapter 12.

Section 3. Unprofessional Conduct. Unprofessional conduct under KRS 317A.140 includes the following:

(1) Intentionally withholding information or lying to a board member or board employee who is conducting a lawful inspection or investigation of an alleged or potential violation of KRS Chapter 317A or 201 KAR Chapter 12;

(2) A salon, limited facility, or school remaining open to the public if not appropriately licensed by the board;

(3) Providing or teaching any cosmetology, nail technology, esthetic, lash artistry, makeup artistry, or threading services unless appropriately licensed or permitted by the board under 201 KAR Chapter 12;

(4) Failure to comply with the lawful request of the board, ~~[of]~~ the executive director[board administrator], inspector, or agent for the following:

(a) Allow entry to perform an[Permit] inspection of the licensed premises; or

(b) Allow the[Permit] inspection of or the copying or production of books, papers, documents, or records of information or material pertaining to activity licensed by the board or related to the provisions of KRS Chapter 317A or the administrative regulations promulgated by the board; or

(c) Refusing to provide a valid state or federal government issued identification matching the posted license or permit; or

(d) Removal of any posted notice from the board pertaining to violations, inspection failures, or lack of licensure by the board.

(5) Any attempt by a license or permit holder to bribe a Kentucky Board of Cosmetology representative or induce a board representative to violate a provision of KRS 317A or 201 KAR Chapter 12;

(6) Any attempt to fraudulently produce or duplicate board requested documents or licensure; or

(7) Any violation of the Code of Ethics as stated in 201 KAR 12:230.

Section 4. Signage. The main entrance to any establishment licensed by the board shall display a sign indicating a beauty salon, nail salon, esthetic salon, limited facility, or cosmetology school. The sign shall indicate the name of the salon, limited facility, or school as it is registered with the Kentucky Board of Cosmetology and shall be clearly visible at the main entrance of the establishment.

MARGARET MEREDITH, Board Chair

APPROVED BY AGENCY: July 1, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2022, at 10:00 am, at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this

agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S. Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: Regulation outlines inspection process and requirements for posting and agency authority to enter a facility.

(b) The necessity of this administrative regulation: It is necessary to define authorities and required postings to ensure public awareness and compliance from licensees on documents pertinent to licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317A.060 requires the board to promulgate administrative regulations governing the operation of any schools, limited facilities, and salons of cosmetology, nail technology, threading, eyelash artistry, makeup artistry, esthetics, and to protect the health and safety of the public.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Posting of licensure, previous inspections, professional conduct and inspections provide public assurance of safety and accountability.

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

(a) How the amendment will change this existing administrative regulation: additional terms are outlined to continue to protect the public from unlicensed and unsafe practices.

(b) The necessity of the amendment to this administrative regulation: clarity and inclusive items from the prevailing statute are added for clarity.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 317A requires the board to promulgate safety standards to protect the public.

(d) How the amendment will assist in the effective administration of the statutes: this will allow staff to require proof of identity to reduce the fraud of unlicensed individuals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members of the public will be impacted by increased safety awareness in 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: No additional steps are necessary to comply with this regulation- a government issued id is a requirement of licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): no additional cost will be necessary.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public assurance that the individuals are licensed properly for safety in the industry.

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

(a) Initially: no additional costs

(b) On a continuing basis: no additional costs

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

implementation and enforcement of this administrative regulation: All funding for agency are from licensing fees and will remain that way.

(7) Provide an assessment of whether an 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 funds or fees are necessary.

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

(9) TIERING: Is tiering applied? No tiering is needed all funds are from a restricted source.

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? No additional agencies will be affected by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A is the prevailing authority statute there is no federal oversight on these items.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 additional revenue

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

(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 (+/-): N/A

Expenditures (+/-): N/A

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. No additional savings will occur and no additional expenditures

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional savings will be created.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings is created

(c) How much will it cost the regulated entities for the first year? No additional costs will occur

(d) How much will it cost the regulated entities for subsequent years? No additional costs.

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

Cost Savings (+/-): n/a

Expenditures (+/-): n/a

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)] There is no major economic impact associated with this regulation.

STATEMENT OF EMERGENCY 201 KAR 12:082E

This emergency regulation is being promulgated under KRS 13.190(1)(a)1 to create compliance with SB 113 (R.S. 2022), which was signed into law by the General Assembly and the Governor in April of 2022 and becomes effective July 14, 2022. The implementation of SB 113 is imminent, and a regulatory schematic is necessary for compliance by the Kentucky Board of Cosmetology. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor
MARGARET MEREDITH, Board Chair

BOARDS AND COMMISSIONS Board of Cosmetology (Emergency Amendment)

201 KAR 12:082E. Education requirements and school administration.

EFFECTIVE: July 12, 2022

RELATES TO: KRS 317A.020, 317A.050, 317A.090

STATUTORY AUTHORITY: KRS 317A.060, 317A.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1)(h) requires the board to promulgate administrative regulations governing the hours and courses of instruction at schools of cosmetology, esthetic practices, and nail technology. KRS 317A.090 establishes licensing requirements for schools of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required for students and faculty for schools of cosmetology, esthetic practices, and nail technology.

Section 1. Subject Areas. The regular courses of instruction for cosmetology students shall contain courses relating to the subject areas identified in this section.

(1) Basics:

(a) History and Career Opportunities;

(b) Life Skills;

(c) Professional Image; and

(d) Communications.

(2) General Sciences:

(a) Infection Control: Principles and Practices;

(b) General Anatomy and Physiology;

(c) Skin Structure, Growth, and Nutrition;

(d) Skin Disorders and Diseases;

(e) Properties of the Hair and Scalp;

(f) Basic Chemistry; and

(g) Basics of Electricity.

(3) Hair Care:

(a) Principles of Hair Design;

(b) Scalp Care, Shampooing, and Conditioning;

(c) Hair Cutting;

(d) Hair Styling;

(e) Braiding and Braid Extensions;

(f) Wig and Hair Additions;

(g) Chemical Texture Services; and

(h) Hair Coloring.

(4) Skin Care:

(a) Hair Removal;

(b) Facials;

(c) Facial Makeup; and

(d) Application of Artificial Eyelashes.

(5) Nails:

(a) Manicuring;

(b) Pedicuring;

(c) Nail Tips and Wraps;

(d) Monomer Liquid and Polymer Powder Nail Enhancements;[

and]

- (e) Light Cured Gels;
- (f) Nail Structure and Growth; and
- (g) Nail Diseases and Disorders.
- (6) Business Skills:
 - (a) Preparation for Licensure and Employment;
 - (b) On the Job Professionalism; and
 - (c) Salon Businesses.

Section 2. A school or program of instruction of any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall teach the students about the various supplies and equipment used in the usual salon practices.

Section 3. Instructional Hours.

- (1) A cosmetology student shall receive not less than 1,500 hours in clinical class work and scientific lectures with a minimum of:
 - (a) 375 lecture hours for science and theory;
 - (b) 1,085 clinic and practice hours; and
 - (c) Forty (40) hours on the subject of applicable Kentucky statutes and administrative regulations.
- (2) A cosmetology student shall not perform chemical services on the public until the student has completed a minimum of 250 hours of instruction.

Section 4. Training Period for Cosmetology Students, Nail Technician Students, Esthetician Students, and Apprentice Instructors.

- (1) A training period for a student shall be no more than eight (8) hours per day, forty (40) hours per week.
- (2) A student shall be allowed thirty (30) minutes per eight (8) hour day or longer for meals or a rest break. This thirty (30) minute period shall not be credited toward a student's instructional hours requirement.

Section 5. Laws and Regulations.

- (1) At least one (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A and 201 KAR Chapter 12.
- (2) Schools or programs of instruction of any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall provide a copy of KRS Chapter 317A and 201 KAR Chapter 12 to each student upon enrollment.

Section 6. Nail Technician Curriculum. The nail technician course of instruction shall include the following:

- (1) Basics:
 - (a) History and Opportunities;
 - (b) Life Skills;
 - (c) Professional Image; and
 - (d) Communications.
- (2) General Sciences:
 - (a) Infection Control: Principles and Practices;
 - (b) General Anatomy and Physiology;
 - (c) Skin Structure and Growth;
 - (d) Nail Structure and Growth;
 - (e) Nail Diseases and Disorders;
 - (f) Basics of Chemistry;
 - (g) Nail Product Chemistry; and
 - (h) Basics of Electricity.
- (3) Nail Care:
 - (a) Manicuring;
 - (b) Pedicuring;
 - (c) Electric Filing;
 - (d) Nail Tips and Wraps;
 - (e) Monomer Liquid and Polymer Powder Nail Enhancements;
 - (f) UV and LED Gels; and
 - (g) Creative Touch.
- (4) Business Skills:
 - (a) Seeking Employment;
 - (b) On the Job Professionalism; and
 - (c) Salon Businesses.

Section 7. Nail Technology Hours Required.

- (1) A nail technician student shall receive no less than 450 hours in clinical and theory class work with a minimum of:
 - (a) 150 lecture hours for science and theory;
 - (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) 275 clinic and practice hours.
- (2) A nail technician student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

Section 8. Apprentice Instructor Curriculum. The course of instruction for an apprentice instructor of any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall include no less than 750 hours, 425 hours of which shall be in direct contact with students. 325 hours of the required theory instruction may be taken in person or online, in the following areas:

- (1) Orientation;
- (2) Psychology of student training;
- (3) Introduction to teaching;
- (4) Good grooming and professional development;
- (5) Course outlining and development;
- (6) Lesson planning;
- (7) Teaching techniques (methods);
- (8) Teaching aids, audio-visual techniques;
- (9) Demonstration techniques;
- (10) Examinations and analysis;
- (11) Classroom management;
- (12) Recordkeeping;
- (13) Teaching observation;
- (14) Teacher assistant; and
- (15) Pupil teaching (practice teaching).

Section 9. Supervision.

- (1) An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor while providing any instruction for students.~~[during the school day.]~~ "Immediate supervision" in this instance means a licensed instructor is physically present in the same room and overseeing the activities of the apprentice instructor at all times.
- (2) An apprentice instructor shall not assume the duties and responsibilities of a licensed supervising instructor.
- (3) An apprentice instructor shall not teach any practices defined in KRS Chapter 317A or 201 KAR Chapter 12 outside of the board licensed school in which the individual is enrolled.

Section 10. Instructors Online Theory Course. All online theory instruction completed to comply with Section 8 of this administrative regulation shall be administered from an approved digital platform at a licensed Kentucky school of cosmetology, esthetic practices, or nail technology.

Section 11. Additional Coursework. Apprentice Esthetics and Nail Technology Instructors shall also complete an additional fifty (50) hours of advanced course work in that field within a two (2) year period prior to the instructor examination.

Section 12. Schools may enroll persons for a special supplemental course in any subject.

Section 13. Esthetician Curriculum. The regular course of instruction for esthetician students shall consist of courses relating to the subject areas identified in this section.

- (1) Basics:
 - (a) History and Career Opportunities;
 - (b) Professional Image; and
 - (c) Communication.
- (2) General Sciences:
 - (a) Infection Control: Principles and Practices;
 - (b) General Anatomy and Physiology;
 - (c) Basics of Chemistry;
 - (d) Basics of Electricity; and

- (e) Basics of Nutrition.
- (3) Skin Sciences:
 - (a) Physiology and Histology of the Skin;
 - (b) Disorders and Diseases of the Skin;
 - (c) Skin Analysis; and
 - (d) Skin Care Products: Chemistry, Ingredients, and Selection.
- (4) Esthetics:
 - (a) Treatment Room;
 - (b) Basic Facials;
 - (c) Facial Massage;
 - (d) Facial Machines;
 - (e) Hair Removal;
 - (f) Advanced Topics and Treatments;
 - (g) Application of Artificial Eyelashes; and
 - (h) Makeup.
- (5) Business Skills:
 - (a) Career Planning;
 - (b) The Skin Care Business; and
 - (c) Selling Products and Services.

Section 14. Esthetician Hours Required.

- (1) An esthetician student shall receive no less than 750 hours in clinical and theory class work with a minimum of:
 - (a) 250 lecture hours for science and theory;
 - (b) Thirty-five (35) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) 465 clinic and practice hours.
- (2) An esthetician student shall have completed 115 hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first 115 hours.

Section 15. Shampoo Styling~~[Blow-Drying Services]~~ License Subject Areas. The regular courses of instruction for blow drying services license students shall contain courses relating to the subject areas identified in this section.

- (1) Basics:
 - (a) History and Career Opportunities;
 - (b) Life Skills;
 - (c) Professional Image; and
 - (d) Communications.
- (2) General Sciences:
 - (a) Infection Control: Principles and Practices;
 - (b) General Anatomy and Physiology of head, neck, and scalp;
 - (c) Skin Disorders and Diseases of head, neck, and scalp;
 - (d) Properties of the Hair and Scalp; and
 - (e) Basics of Electricity.
- (3) Hair Care:
 - (a) Principles of Hair Design;
 - (b) Scalp Care, Shampooing, and Conditioning;
 - (c) Hair Styling;
 - (d) Blow drying;
 - (e) Roller Placement;
 - (f) Finger waves or pin curls;
 - (g) Thermal curling;
 - (h) Flat iron styling;
 - (i) Wig and Hair Additions; and
 - (j) Long hair styling.
- (4) Business Skills:
 - (a) Preparation for Licensure and Employment;
 - (b) On the Job Professionalism; and
 - (c) Salon Businesses.

Section 16. Shampoo Styling~~[Blow-Drying Services]~~ License Hours Required.

- (1) A shampoo styling~~[blow-drying]~~ services license student shall receive no less than 300~~[400]~~ hours in clinical and theory class work with a minimum of:
 - (a) 100~~[150]~~ lecture hours for science and theory;
 - (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) 175~~[275]~~ clinic and practice hours.
- (2) A shampoo styling~~[blow-drying]~~ services license student shall

have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

Section 17. Extracurricular Events. Each cosmetology, nail technician, and esthetician student shall be allowed up to sixteen (16) hours for field trip activities pertaining to the profession of study, sixteen (16) hours for attending educational programs, and sixteen (16) hours for charitable activities relating to the field of study, totaling not more than forty-eight (48) hours and not to exceed eight (8) hours per day. Attendance or participation shall be reported to the board within ten (10) business days of the field trip, education show, or charitable event on the Certification of Student Extracurricular Event Hours form.

Section 18. Student Records. Each school shall:

- (1) Maintain a legible and accurate daily attendance record used only for the verification and tracking of the required contact hours for education for all full-time students, part-time students, and apprentice instructors with records that shall be recorded using a digital biometric time keeping program as follows:
 - (a) All beginning, end, break, and lunch times shall be recorded; and
 - (b) All instructors shall comply with the biometric time keeping system.
- (2) Keep a record of each student's practical work and work performed on clinic patrons;
- (3) Maintain a detailed record of all student enrollments, withdrawals, and dismissals for a period of five (5) years; and
- (4) Make records required by this section available to the board and its employees upon request.

Section 19. Certification of Hours.

- (1) Schools shall forward to the board digital certification of a student's hours completed within ten (10) business days of a student's withdrawal, dismissal, completion, or the closure of the school.
- (2) No later than the 10th day of each month, a licensed school shall submit to the board via electronic delivery a certification of each student's or apprentice instructor's total hours obtained for the previous month and the total accumulated hours to date for all individuals [students] enrolled. Amended reports shall not be accepted by the board without satisfactory proof of error. Satisfactory proof of error shall require, at a minimum, a statement signed by the school manager certifying the error and the corrected report.

Section 20. No Additional Fees. Schools shall not charge the enrolled individual~~[students]~~ additional fees beyond the agreed upon contracted amount.

Section 21. Instructor Licensing and Responsibilities.

- (1) A person employed by a school or program for the purpose of teaching or instruction shall be licensed by the board as an instructor and shall post his or her license as required by 201 KAR 12:060.
- (2) A licensed instructor or apprentice instructor shall supervise all students during a class or practical student work.
- (3) An instructor or apprentice instructor shall render services only incidental to and for the purpose of instruction.
- (4) Licensed schools shall not permit an instructor or apprentice instructor to perform services in the school for compensation~~[during school hours]~~.
- (5) An instructor shall not permit students to instruct or teach other students in the instructor's absence.
- (6) Except as provided in subsection (7) of this section, schools may not permit a demonstrator to teach in a licensed school.
- (7) A properly qualified, licensed individual may demonstrate a new process, preparation, or appliance in a licensed school if a licensed instructor is present.
- (8) Licensed schools or programs of instruction in any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall, at all times, maintain a minimum faculty to student ratio of one

(1) instructor for every twenty (20) students enrolled and supervised.

(9) Licensed schools or programs of instruction in any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall, at all times, maintain a minimum ratio of one (1) instructor for every two (2) apprentice instructors enrolled and supervised.

(10) Within ten (10) business days of the termination, employment, and other change in school faculty personnel, a licensed school shall notify the board of the change.

(11) All instructors on staff within a licensed school shall be designated as full time, part time, or substitute instructors to the board when reporting employment.

Section 22. School Patrons.

(1) All services rendered in a licensed school to the public shall be performed by students. Instructors may teach and aid the students in performing the various services.

(2) A licensed school shall not guarantee a student's work.

(3) A licensed school shall display in the reception room, clinic room, or any other area in which the public receives services a sign to read: "Work Done by Students Only." The letters shall be a minimum of one (1) inch in height.

Section 23. Enrollment.

(1) Any person enrolling in a school or program for instruction in any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall furnish proof that the applicant has:

(a) A high school diploma,

(b) A General Educational Development (GED) diploma; or

(c) Results from the Test for Adult Basic Education indicating a score equivalent to the successful completion of the twelfth grade of high school.

(d) Apprentice Instructors shall provide proof of individual licensure issued at minimum one (1) year prior to enrollment date to demonstrate compliance with the applicable requirements set forth in KRS 317A.050.

(2) The applicant shall provide with the enrollment a passport photograph taken within thirty (30) days of submission of the application.

(3) A student or apprentice instructor enrolling in a licensed school who desires to transfer hours from an out of state school shall, prior to enrollment, provide to the board certification of the hours to be transferred from the state agency that governs the out of state school.

(4) If the applicant is enrolled in a board approved program at an approved Kentucky high school, the diploma, GED, or equivalency requirement of this section is not necessary until examination.

(5) All enrollments shall be accompanied by the proper fee as defined in 201 KAR 12:260.

Section 24. Certificate of Enrollment.

(1) Schools shall submit to the board ~~[the student's]~~a digital enrollment, accompanied by the applicant's proof of education and proof of licensure if enrolling as an apprentice instructor, as established in Section 23 of this administrative regulation, within ten (10) business days of enrollment.

(2) All ~~[student]~~identification information submitted on the school's digital enrollment shall exactly match a state or federal government-issued identification card to take the examination. If corrections shall be made, the school shall submit the Enrollment Correction Application digitally and the enrollment correction fee in 201 KAR 12:260 within ten (10) days of the erroneous submission. Students with incorrect enrollment information shall not be registered for an examination.

Section 25. Student Compensation.

(1) Schools shall not pay a student a salary or commission while the student is enrolled at the school.

(2) Licensed schools shall not guarantee future employment to students.

(3) Licensed schools shall not use deceptive statements and false promises to induce student enrollment.

(4) An apprentice instructor may receive compensation as a

teaching assistant.

Section 26. Hours of Operation. All schools shall report hours of operation to the board. Any change of hours or closures shall be reported no less than ten (10) business days in advance of change or closure.

Section 27. Transfers.~~[Transfer.]~~ An individual~~[A—student]~~ desiring to transfer to another licensed school shall:

(1) Within ten (10) days, notify~~[Notify]~~ the school in which the individual~~[student]~~ is presently enrolled of the ~~[student's]~~withdrawal in writing; and

(2) Complete a digital enrollment as required for the new school.

Section 28.~~[Section 27.]~~ Refund Policy. A school shall include the school's refund policy in all enrollment~~[school-student]~~ contracts.

Section 29.~~[Section 28.]~~ Student Complaints. A student or apprentice instructor may file a complaint with the board concerning the school in which the individual~~[student]~~ is enrolled, by following the procedures outlined in 201 KAR 12:190.

Section 30.~~[Section 29.]~~ Student Leave of Absence. The school shall report an individual's~~[a student's]~~ leave of absence to the board within ten (10) business days. The leave shall be reported:

(1) In writing from the individual~~[student]~~ to the school; and

(2) Clearly denote the beginning and end dates for the leave of absence.

Section 31.~~[Section 30.]~~ ~~[Student]~~Withdrawal. Within ten (10) business days from a student or apprentice instructor's~~[student's]~~ withdrawal, a licensed school shall report the name of the withdrawing individual~~[student]~~ to the board.

Section 32.~~[Section 31.]~~ Credit for Hours Completed. The board shall credit hours previously completed in a licensed school as follows:

(1) Full credit (hour for hour) for hours completed within five (5) years of the date of school enrollment; and

(2) No credit for hours completed five (5) or more years from the date of school enrollment.

Section 33.~~[Section 32.]~~ Program Transfer Hours. An individual transferring valid hours between board licensed schools or~~[If]~~ a current licensee choosing~~[chooses]~~ to enroll~~[enter]~~ into a licensed school to learn the practice of cosmetology, esthetics, shampoo styling or nail technology~~[they]~~ shall complete and submit the Program Hour Transfer Request form. With exceptions as listed in subsection 1 through 4 of this section an individual shall not transfer hours from one discipline to another. Upon receiving a completed Program Hour Transfer Request form, the board shall treat the transferred valid hours or license as earned credit hours in a cosmetology program subject to the following:

(1) Transfer of a current esthetics license shall credit the transferee no more than 400 hours in a cosmetology program;

(2) Transfer of a current nail technologist license shall credit the transferee no more than 200 hours in a cosmetology program;

(3) Transfer of a current shampoo styling~~[blow drying services]~~ license shall credit the transferee no more than 300 hours in a cosmetology program; or

(4) Transfer of a current barber license shall credit the transferee no more than 750 hours in a cosmetology program.

(5) Credit hours transferred pursuant to this section shall only take effect upon the transferee's completion of the remaining hours necessary to complete a cosmetology program.

Section 34.~~[Section 33.]~~ Emergency Alternative Education. Digital theory content may be administered by a licensed school if forced long-term or intermittent emergency closure or closures are due to a world health concern or crisis as cited by national or state authority. The board may determine when emergency alternative education shall begin and end based on the effect of the state of emergency on education standards and shall make determinations

in compliance with state and national declarations of emergency. The necessary compliance steps for implementation are:

- (1) Full auditable attendance records shall be kept showing actual contact time spent by a student in the instruction module.
- (2) Milady or Pivot Point supported digital curriculum platforms or recorded video conference participation shall be used.
- (3) Schools shall submit an outline to the board within ten (10) days prior to the occurrence of the alternative education defining the content scope to be taught or completed, and a plan for a transition into a digital training environment. Plans may be submitted for approval by the board to be kept for future use if emergency alternative education is allowable.
- (4) Completion certificates showing final scoring on digital modules shall be maintained in student records.
- (5) Schools and students shall comply with Section 4 of this administrative regulation on accessible hours.
- (6) No student shall accrue more than the total required theory instruction hours outlined in the instructional sections in emergency alternative education time as established in Sections 3(1)(a), 7(1)(a), 14(1)(a) and 16(1)(a) of this administrative regulation.
- (7) The board may determine eligibility for accruals based on duration of the crisis and applicable time limits for alternative emergency education availability.

Section 35.~~[Section 34.]~~ Incorporation by Reference. The following material is incorporated by reference:

- (1)
 - (a) "Certification of Student Extracurricular Event Hours", July 2022~~[October 2018]~~;
 - (b) "Enrollment Correction Application", July 2022~~[October 2018]~~; and
 - (c) "Program Hour Transfer Request Form", July 2022~~[April 2020]~~.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 1049 US Hwy 127 S, Annex #2~~[111 St. James Court, Suite A.]~~ 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 kbc.ky.gov.

MARGARET MEREDITH, Chair

APPROVED BY AGENCY: July 1, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2022, at 10:30 am, at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions for licensed schools of cosmetology, esthetics, and nail technology in Kentucky.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure standardized education that complies with state statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to all aspects of KRS 317A.050 and 317A.090.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines and defines education standards and the quantity of course hours required for licensed schools and students seeking Kentucky licensure by the board.

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

(a) How the amendment will change this existing administrative regulation: Amendment provides adjusted hours requirements for a license and clarifies registration process for apprentice instructors per SB 113.

(b) The necessity of the amendment to this administrative regulation: Amendment is necessary to conform to SB 113.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides additional education options for currently licensed schools.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated regulatory scheme for licensed schools that complies with the governing statute as adjusted in SB113.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 58 licensed cosmetology schools and this will only affect those facilities and any individuals planning on opening a school.

(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: Adjustment in process for apprentice instructor enrollment and a reduction in hours for shampoo styling licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No changes or increases in fees are anticipated as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A more rapid turnover of students will happen with the hours reduction in shampoo styling and an easier path for apprentice instructor's enrollment.

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

(a) Initially: no costs for initial adjustments
(b) On a continuing basis: no additional costs necessary for adjustments

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional funding requirements for this adjustment.

(7) Provide an assessment of whether an 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 will be needed to implement the adjustments in this regulation.

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

(9) TIERING: Is tiering applied? There is no tiering for this regulation as there are no additional oversights or funding outside of agency restricted funds.

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? Kentucky Board of Cosmetology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 317A.050 and KRS 317A.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no anticipated effect on state or local government agency revenue as a result of this amendment.

(a) How much 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 additional revenue is anticipated as a result of this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue is anticipated as a result of this amendment.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs are need 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 (+/-): N/A
Expenditures (+/-): N/A
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? There will not be a cost savings for the regulated entities for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will not be a cost savings for subsequent years for the regulated entities.

(c) How much will it cost the regulated entities for the first year? It will not create an additional cost to regulate for the first year.

(d) How much will it cost the regulated entities for subsequent years? It will not create additional cost 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 (+/-): N/A
Expenditures (+/-): N/A
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)]. There is not major economic impact for this regulation adjustment.

STATEMENT OF EMERGENCY 201 KAR 12:190E

This emergency regulation is being promulgated under KRS 13.190(1)(a)1 to create compliance with SB 113 (R.S. 2022), which was signed into law by the General Assembly and the Governor in April of 2022 and becomes effective July 14, 2022. The implementation of SB 113 is imminent, and a regulatory schematic is necessary for compliance by the Kentucky Board of Cosmetology. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor
MARGARET MEREDITH, Board Chair

BOARDS AND COMMISSIONS Board of Cosmetology (Emergency Amendment)

201 KAR 12:190E. Complaint and disciplinary process.

EFFECTIVE: July 12, 2022

RELATES TO: KRS 317A.070, 317A.140, 317A.145

STATUTORY AUTHORITY: KRS 317A.060, 317A.145

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.145

authorizes the board to investigate complaints and, where appropriate, take disciplinary action for violations of KRS Chapter 317A and the administrative regulations promulgated by the board. KRS 317A.070 requires the board to hold hearings to review the board's decision upon the request of any licensee or applicant affected by the board's decision to refuse to issue or renew a license or permit, or to take disciplinary action against a license or permit. This administrative regulation establishes the board's complaint and disciplinary process.

Section 1. Definitions.

(1) "Complaint" means any writing received or initiated by the board alleging conduct by an individual or entity that may constitute a violation of KRS Chapter 317A or 201 KAR Chapter 12.

(2) "Respondent" means the person or entity against whom a complaint has been made.

Section 2. Complaint Committee. The board may appoint a committee of no more than two (2) board members to review complaints, initiate investigations, participate in informal proceedings to resolve complaints, and make recommendations to the board for disposition of complaints. The board staff and board counsel may assist the committee.

Section 3. Complaint Procedures.

(1) Complaints shall be submitted on the board's Complaint Form, signed by the person making the complaint, and describe with sufficient detail the alleged violation(s) of KRS Chapter 317A, or 201 KAR Chapter 12. The Complaint Form shall be made available on the board's Web site at <http://kbc.ky.gov>.

(2) A copy of the complaint shall be provided to the respondent. The respondent shall have ten (10) days from the date of receipt to submit a written response. The complaints committee or the executive director~~[board administrator]~~ may extend these timelines as appropriate.

(3) The complaint committee shall meet at regular intervals~~[once a month]~~. A complaint and any written response shall arrive ten (10) days prior to the meeting to meet the~~[that month's]~~ deadline for making a recommendation to the board. The complaint committee shall review the complaint, the response, and any other relevant information or material available, and recommend that the board:

- Dismiss the complaint;
- Order further investigation;
- Issue a written admonishment for a minor violation; or
- Issue a notice of disciplinary action informing the respondent

of the following:

- The statute(s) or administrative regulation(s) violated;
- The factual basis for the disciplinary action;
- The penalty to be imposed; and
- The licensee's or permittee's right to request a hearing.

(4) A written admonishment shall not be considered disciplinary action by the board, but may be considered in any subsequent disciplinary action against the licensee or permittee. A copy of the written admonishment shall be placed in the licensee or permittee's file at the board office.

(5) If the board determines that a person or entity is engaged in the unlicensed practice of cosmetology, esthetics practices, or nail technology, the board may:

- Issue to the person or entity a written request to voluntarily cease the unlicensed activity; or
- Seek injunctive relief in a court of competent jurisdiction pursuant to KRS 317A.020(7).

(6) Any board member who has participated in the investigation

of a complaint or who has substantial personal knowledge of facts concerning the complaint, which could influence an impartial decision, shall disqualify himself or herself from participating in the adjudication of the complaint.

Section 4. Settlement by Informal Proceedings.

(1) The board, through its complaints committee or counsel, may, at any time during this process, resolve the matter through informal means, including an agreed order of settlement or mediation.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the respondent and board chair, or the chair's designee.

Section 5. Hearings.

(1) A written request made by the respondent for a hearing shall be filed with the board within thirty (30) days of the date of the board's notice that it intends to refuse to issue or renew a license or permit, to deny, suspend, probate, or revoke a license or permit, [or] to impose a fine, or otherwise discipline[or] a licensee or permittee.

(2) If no request for a hearing is filed, the board's refusal to issue or renew a license or permit, or the board's notice of disciplinary action, shall become effective upon the expiration of the time to request a hearing.

Section 6. Incorporation by Reference.

(1) "Complaint Form", July 2022[~~April 2018~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Cosmetology, 1049 US Hwy 127 S. Annex #2[~~111 St. James Court, Suite A~~], Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARGARET MEREDITH, Chair

APPROVED BY AGENCY: July 1, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2022, at 11:30 am, at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S. Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the complaint and investigations process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the needed investigation and complaint process to be followed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is being drafted to clarify complaints and investigation processes as set forth in Chapter 13 of KRS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the details of the complaint form and process for concerns with licensees.

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

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will clarify complaint processes and investigation details

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify details and compliance standards as required in KRS 317A for complaint processes.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation provides guidelines for complaint details as required in current statutory requirements in KRS 317A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will specify clearer details on complaint compliance to promote continuity across board changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There will be no impact to licensees, businesses, organizations, or state or local governments.

(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 does not impose any requirements on regulated entities.

(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 cost to licensees because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The details of esthetic restrictions.

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

(a) Initially: No additional funds are necessary initially to implement this administrative regulation.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis 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: Current funding will not 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: No changes or increases in fees is required by this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation does not impose any requirements on current or prospective licensees.

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? Kentucky Board of Hairdressers and Cosmetologists.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050, KRS 317A.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? No funds will be raised.

(b) How 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 funds

will be raised.

(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 (+/-): N/A

Expenditures (+/-): N/A

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?

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

(c) How much will it cost the regulated entities for the first year?

(d) How much will it cost the 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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

(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 regulation does not create a major economic impact.

STATEMENT OF EMERGENCY 201 KAR 12:230E

This emergency regulation is being promulgated under KRS 13.190(1)(a)1 to create compliance with SB 113 (R.S. 2022), which was signed into law by the General Assembly and the Governor in April of 2022 and becomes effective July 14, 2022. The implementation of SB 113 is imminent, and a regulatory schematic is necessary for compliance by the Kentucky Board of Cosmetology. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor

MARGARET MEREDITH, Board Chair

BOARDS AND COMMISSIONS Board of Cosmetology (Emergency Amendment)

201 KAR 12:230E. Code of ethics.

EFFECTIVE: July 12, 2022

RELATES TO: KRS 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to establish a code of ethics for all persons and entities issued a license or permit by the board. This administrative regulation establishes the required code of ethics.

Section 1. Code of Ethics. A licensee or permittee shall:

(1) Provide competent professional services to the consumer;

(2) Provide a clear explanation of the services offered and the cost of those services;

(3) Follow appropriate disinfection and sanitation requirements as established in KRS Chapter 317A and 201 KAR 12:100;

(4) Follow proper health profile procedures before application of

the product;

(5) Perform a thorough service evaluation and consultation for each client to determine if the procedure or product is appropriate before application;

(6) Discuss and outline realistic expectations with the client after the evaluation; and

(7) Provide all services~~Treat all clients~~ with courtesy and respect.

MARGARET MEREDITH, Chair

APPROVED BY AGENCY: July 1, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, at 2:00, at Kentucky Board of Cosmetology. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S. Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the code of ethics to be maintained by all licensees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the required code of ethics mandated by KRS Chapter 317A

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is being amended to remove statutory reference to a repealed chapter of KRS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will update language for compliance of code of ethics to include all practices not just client relationships.

(2) If 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 clarify a necessary statement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend the statutory authority and clean up language.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides guidelines for the code of ethics to be maintained by all licensees as required in current statutory requirements in KRS 317A.

(d) How the amendment will assist in the effective administration of the statutes: Compliance of the statutory mandate in Chapter 317A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There will be no impact to licensees, businesses, organizations, or state or local governments.

(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 does not impose any

requirements on regulated entities.

(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 cost to licensees because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): higher ethical standards in the industry.

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

(a) Initially: No additional funds are necessary initially to implement this administrative regulation.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis 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: Current funding will not 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: No changes or increases in fees is required by this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation does not impose any requirements on current or prospective licensees.

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? Kentucky Board of Cosmetology is the only agency affected. No other areas of state or local government are affected by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A is the only statute that authorizes this action.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no expenditures needed or required by other agencies.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is a possibility of local occupational or income taxes to be collected as more individuals are placed in the workforce with these permits.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There is a possibility of income taxes to be collected as more individuals are placed in the workforce with these permits

(c) How much will it cost to administer this program for the first year? It will not cost any additional revenue for state or local governments.

(d) How much will it cost to administer this program for subsequent years? It will not cost any additional revenue for state or local governments.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: 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. There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be a balanced cost to expenditures to the regulating agency to oversee

the items in this regulation at this time.

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

(c) How much will it cost the regulated entities for the first year? There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

(d) How much will it cost the regulated entities for subsequent years? There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

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

Cost Savings (+/-): N/A

Expenditures (+/-): N/A

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)] There will not be any major economic impact for any entities.

STATEMENT OF EMERGENCY 201 KAR 12:260E

This emergency regulation is being promulgated under KRS 13.190(1)(a)1 to create compliance with SB 113 (R.S. 2022), which was signed into law by the General Assembly and the Governor in April of 2022 and becomes effective July 14, 2022. The implementation of SB 113 is imminent, and a regulatory schematic is necessary for compliance by the Kentucky Board of Cosmetology. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor

MARGARET MEREDITH, Board Chair

BOARDS AND COMMISSIONS Board of Cosmetology (Emergency Amendment)

201 KAR 12:260E. Fees.

EFFECTIVE: July 12, 2022

RELATES TO: KRS 317A.050, 317A.062

STATUTORY AUTHORITY: KRS 317A.062

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.062 requires the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations and the issuance, renewal, and restoration of licenses and permits. This administrative regulation establishes a fee schedule for applications, permits, and licenses issued by the board.

Section 1. The initial license fees shall be as follows:

- (1) Cosmetologist - fifty (50) dollars;
- (2) Nail technician - fifty (50) dollars;
- (3) Esthetician - fifty (50) dollars;
- (4) Shampoo Styling[Blow-drying] services - fifty (50) dollars;
- (5) Cosmetology instructor - fifty (50) dollars;
- (6) Esthetic instructor - fifty (50) dollars;
- (7) Nail Technology instructor - fifty (50) dollars;
- (8) Beauty salon - \$100;
- (9) Nail salon - \$100;
- (10) Esthetic salon - \$100;
- (11) School - \$1,500;
- (12) School transfer of ownership - \$1,500;
- (13) Salon transfer of ownership - \$100;
- (14) Limited facility license for a limited beauty salon, threading facility, eyelash artistry facility, and makeup facility - \$100;
- (15) Threading permit - fifty (50) dollars;

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- (16) Eyelash Artistry Permit - fifty (50) dollars; and
- (17) Makeup Artistry Permit - fifty (50) dollars.
- (18) Event Services Permit- \$100
- (19) Homebound Care Permit- \$100

Section 2. The renewal license fees shall be as follows:

- (1) Cosmetologist - fifty (50) dollars;
- (2) Nail technician - fifty (50) dollars;
- (3) Esthetician - fifty (50) dollars;
- (4) Shampoo Styling~~[Blow-drying]~~ services - fifty (50) dollars;
- (5) Cosmetology instructor - fifty (50) dollars;
- (6) Esthetic instructor - fifty (50) dollars;
- (7) Nail Technology instructor - fifty (50) dollars;
- (8) Beauty salon - \$100;
- (9) Nail salon - \$100;
- (10) Esthetic salon - \$100;
- (11) School - \$250;
- (12) Limited facility license for a limited beauty salon, threading facility, eyelash artistry facility, and makeup facility - \$100;
- (13) Threading permit - fifty (50) dollars;
- (14) Eyelash Artistry Permit - fifty (50) dollars; ~~and~~
- (15) Makeup Artistry Permit - fifty (50) dollars;
- (16) Event Services Permit- \$100; and
- (17) Homebound Care Permit- \$100.

Section 3. Applications for examination including retake applications shall be accompanied by a fee as follows:

- (1) Cosmetologist - eighty-five (85)~~[seventy-five (75)]~~ dollars;
- (2) Nail technician - eighty-five (85)~~[seventy-five (75)]~~ dollars;
- (3) Esthetician - eighty-five (85)~~[seventy-five (75)]~~ dollars;
- (4) Shampoo Styling~~[Blow-drying]~~ services - eighty-five (85)~~[seventy-five (75)]~~ dollars; and
- (5) Instructor - eighty-five (85)~~[seventy-five (75)]~~ dollars.

Section 4. Miscellaneous fees shall be as follows:

- (1) Demonstration permit - fifty (50) dollars;
- (2) Certification for an out-of-state license or school hours transfer - twenty-five (25) dollars;
- (3) Duplicate license - twenty-five (25) dollars;
- (4) Salon manager change - fifty (50) dollars;
- (5) School manager change - fifty (50) dollars;
- (6) Enrollment correction fee, as established in 201 KAR 12:082, Section 24(2) - fifteen (15) dollars;
- (7) Out of state endorsement application fee - \$100;
- (8) Apprentice instructor enrollment - twenty-five (25)~~[fifty (50)]~~ dollars;
- (9) Student enrollment~~[permit]~~ - twenty-five (25) dollars;
- (10) Individual license restoration fee - fifty (50) dollars;
- (11) Salon license restoration fee, or limited facility permit~~[license]~~ restoration fee for a limited beauty salon, threading facility, eyelash artistry facility, and makeup facility - \$100;
- (12) School license restoration fee - \$500; and
- (13) School or Salon location change - \$100.

MARGARET MEREDITH, Chair

APPROVED BY AGENCY: July 1, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2022, at 1:00 pm, at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S. Annex #2, Frankfort, Kentucky 40601, (502)

564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a fee schedule for all applications, permits, and licenses issued by the Kentucky Board of Cosmetology (KBC).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out a fee schedule for all persons and entities seeking a permit or license from the KBC.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment adjusts some existing fees for those permits and licenses set forth in KRS Chapter 317A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment adjusts existing fees for the issuance, renewal, and restoration of licenses and permits, board exams, and other miscellaneous fees of the KBC.

(2) If 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 KBC is entirely self-funded through fees it collects for the various applications, permits, and licenses it offers to the public. There was only a minor increase to exam fees to help maintain balance on the new contract for exams and establish a fee structure for the new permits in SB 113.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implementation of a fee for new permits in SB 113 and adjust exam fees to cover new contract costs.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth all KBC fees based on the current statutory requirements in KRS Chapters 317A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides a single administrative regulation setting out all applicable fees for applications, permits, and licenses issued by the KBC.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 38,000 licensees, permittees, and students 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: This amendment does not change any existing requirements, or create a new requirement. Rather, it amends the previous fee schedule contained in the existing administrative regulation and adds the permits implemented by SB 113.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An adjustment to fees is necessary in a few areas to establish new fee structures for permits defined in SB 113.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prospective and current licensees will benefit from a reduction in some fees and clarity in others.

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

(a) Initially: No additional funds are necessary initially to implement this amendment.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KBC is entirely self-funded through fees it collects for permits and licenses. There are no funds necessary to implement this amendment as it updates a fee schedule for applications, permits, and licenses.

(7) Provide an assessment of whether an 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 funding needed, as this amendment and the existing administrative regulation do not implement any action or requirement.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment sets forth fees for licensing based on the current statutory requirements found in KRS Chapters 317A. This amendment implements fees for new permit types as created in SB 113.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this amendment apply equally to all current and prospective licensees.

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 Board of Cosmetology (KBC).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.062.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 KBC is a self-funded agency, deriving its funding solely from the fees it collects for permits and licenses. This amendment modifies the fee schedule in the existing administrative regulation. It is expected to result in an increase in revenue during the first year. Increased revenue is necessary to fund national testing and to implement new permits brought about by the passage of SB 113. Finally, increased funding is necessary for new initiatives such as offering fully online applications and renewals and additional fees for contracts on national exams.

(b) How 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 expected to result in very little increased revenue in subsequent years, which will be used to fund new initiatives.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated 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 (+/-): Increase.

Expenditures (+/-): No impact.

Other Explanation: This amendment updates fees and does not involve any expenditures. As explained above, the fee adjustments in this amendment are anticipated to result in increased revenue. The amount of increased revenue is dependent on the number of applicants for examinations, permits, and licenses. As some of the permits are newly established by SB 113, the expected amount of increased revenue for those new permits and licenses is currently unknown. Taking into account additional expenditures incurred from new licenses, permits, and national testing, it is anticipated that the increase in fees for existing examinations, permits, and licenses will not result in an increase in revenue.

(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?

(b) How much cost savings will this administrative regulation

generate for the regulated entities for subsequent years?

(c) How much will it cost the regulated entities for the first year? It will not create an additional cost to regulate for the first year.

(d) How much will it cost the 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 (+/-):

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)]. There is not a major economic impact created by the adjustments of these fees.

STATEMENT OF EMERGENCY

201 KAR 12:290E

This emergency regulation is being promulgated under KRS 13.190(1)(a)1 to create compliance with SB 113 (R.S. 2022), which was signed into law by the General Assembly and the Governor in April of 2022 and becomes effective July 14, 2022. The implementation of SB 113 is imminent, and a regulatory schematic is necessary for compliance by the Kentucky Board of Cosmetology. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor

MARGARET MEREDITH, Board Chair

BOARDS AND COMMISSIONS

Board of Cosmetology

(New Emergency Administrative Regulation)

201 KAR 12:290E. Permits.

EFFECTIVE: July 12, 2022

RELATES TO: KRS 317A.020, 317A.050, 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing permits in threading, makeup artistry, eyelash artistry, homebound care, and event services. This administrative regulation establishes procedures for permits.

Section 1. Fees. Permit fees are set forth in 201 KAR 12:260.

Section 2. Changes. All changes to account information required for licensure shall be submitted to the board within thirty (30) days of occurrence including:

(1) Legal name change;

(2) Change of address;

(3) Change of facility or employer;

(4) Change of phone number;

(5) Change of email address; and

(6) Any other information as required by KRS 317A or 201 KAR Chapter 12 for licensure.

Section 3. Prior Felony Convictions. An applicant for any permit issued or conducted by the board convicted of a prior felony shall include with his or her application:

(1) A signed letter of explanation from the applicant;

(2) A certified copy of the judgment and sentence from the issuing court; and

(3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.

Section 4. All incorporated forms may be replicated in a digital format for online completion.

Section 5. Threading and Makeup Artistry Permits.

(1) Any person who engages in the practice of threading or makeup artistry shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

- (a) A copy of the applicant's government-issued photo identification;
- (b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;
- (c) Proof of completion of a board approved sanitation course within the six (6) month period preceding the application.

Section 6. Eyelash Artistry Permits.

(1) Any person who engages in the practice of eyelash artistry shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

- (a) A copy of the applicant's government-issued photo identification;
- (b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;
- (c) Proof of completion of a board approved sanitation course within the past six (6) month period preceding the application; and
- (d) Proof of completion of a board approved eyelash certificate training program taught by a licensed instructor within the preceding six (6) months.

Section 7. Homebound Care Permit.

(1) Any person engaging in the cosmetic care of a homebound or medically infirm individual shall first obtain a permit from the board by submitting a completed application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

- (a) A copy of the applicant's government-issued photo identification;
- (b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;
- (c) Proof of ownership, employment, or booth rental agreement with a Kentucky board licensed salon;
- (d) Medical release document for the homebound or infirm individual from a physician, licensed by the Kentucky Board of Medical Licensure, defining which services can or cannot be safely provided.
- (e) The address of the location services will be provided.

Section 8. Event Services Permit.

(1) Any person engaged in providing on site services outside of a board licensed facility for events shall first obtain a permit from the board by submitting a completed application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

- (a) A copy of the applicant's government-issued photo identification;
- (b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;
- (c) Proof of ownership, employment, or booth rental agreement with a Kentucky board licensed salon;
- (d) The address of the location services shall be provided to the board two (2) weeks in advance of each event along with the time frame services will be provided.

Section 9. Practice Before Permit Issuance Prohibited. Any individual found engaging in the practice of threading, makeup artistry, eyelash artistry, or providing homebound care or event services prior to the permit issuance shall be ineligible to receive a permit from the board for a period of one (1) year from the date of the unauthorized practice and be responsible for the payment of any fines ordered by the board.

Section 10. Duplicate Permit, Renewal, and Restoration.

(1) If a permit is lost, destroyed, or stolen after issuance, a duplicate permit may be issued. The permit holder shall submit a statement verifying the loss of the permit using the Duplicate License Application that includes a copy of a government-issued photo identification and pay the duplicate permit fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

(2) The annual license renewal period is July 1 through July 31. All permits shall:

- (a) Be renewed using the board's online portal;
 - (b) Include the required copy of a government-issued photo identification;
 - (c) Include payment of the fee set forth 201 KAR 12:260;
 - (d) Include payment of any outstanding fines associated with a prior disciplinary action as described in KRS 317A.145;
 - (e) Disclose to the board the current name and license number of the facility where the permit holder is working; and
 - (f) Upload a current passport style headshot photo.
- (3) To restore an expired permit, a Restoration Application shall be digitally submitted to the board with payment of the restoration fee as set forth in 201 KAR 12:260 for each year the permit has been expired, the total of which shall not exceed \$300 per permit restored, along with a copy of a government-issued photo identification.

Section 11. Eyelash Artistry Training Programs. (1) An eyelash training program may be approved by the board upon submission of;

- (a) A written request for consideration;
- (b) A copy of the applicant's government-issued photo identification;
- (c) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;
- (d) A copy of the Kentucky cosmetology or esthetics instructor license verifying the credentials to teach the course; and
- (e) A completed training manual with detailed instructions on safety, infection control, eye diseases, contraindications, application and removal procedures, and product knowledge. Manual shall also contain current Kentucky Statutes and Regulations on scope of practices, requirements for facility and personal licensure, and infection control standards.
- (f) A copy of a training contract that outlines the responsibility of the training company, cost for classes, and completion requirements.

(2) Failure to seek approval as required by subsection (1) of this section shall invalidate all certifications issued to trainees and submitted by permit applicant.

(3) An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor while providing any instruction for students. "Immediate supervision" in this instance means a licensed instructor is physically present in the same room and overseeing the activities of the apprentice instructor at all times.

(4) A licensed cosmetology or esthetics school may seek course approval by submitting a curriculum packet for review and providing proof instructor has appropriate credentials to train in eyelash artistry.

Section 12. Eyelash Training Course Administration.

(1) Upon board approval as an eyelash artistry training program the instructor or program director shall ten (10) business days prior:

- (a) Submit to the board the date and time of the training course;
- (b) Submit a class roster of anticipated attendees;
- (c) Provide a copy of the completed contract for each attendee; and
- (d) Upon completion of the reported course a signed and dated roster of attendees shall be submitted.

(2) Any student not listed with a signature on the class roster may be considered absent and may not be considered for a permit to practice from the board.

Section 13. Demonstration Permits. Professional services performed outside a licensed facility including charity events and hair shows may have approval of the board and display the proper

permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Permit Application", July 2022; and

(b) "Demonstration Permit Application", July 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARGARET MEREDITH, Chair

APPROVED BY AGENCY: July 1, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2022, at 11:30am, at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: Regulation sets up requirements and processes necessary to receive a KBC permit as defined and changed in RS22 SB 113.

(b) The necessity of this administrative regulation: Portions of regulation previously resided in the licensing regulation 201 KAR 12:030 but with the addition of more permit types all permit details were moved to a new regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317A requires the board to promulgate regulations on all areas of cosmetology practice for licensing and permits as defined.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets the parameters for training, program approval, and permit issuance for the board regulated permits.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KBC currently regulates more than 35,000 licenses and permits. The number of incoming practitioners varies and there is no way to determine the possible applicants. Currently there are less than 1000 permits in the KBC system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulations already exist to set details and steps to attain a permit with KBC- this regulation expands that information to include the new permit items of homebound care and event services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fees are set in a separate regulation and many items already exist. The fee associated is \$100 or less for each type of permit needed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include increased safety to the public and flexibility to work in situations where a licensed facility is not readily available to the parties. It assists in the care of medically infirm homebound individuals inside their home

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

(a) Initially: No additional cost to implement

(b) On a continuing basis: No additional cost to maintain at this time

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency operates strictly on restricted funds provided by licensing fees. This would be cohesive with that model.

(7) Provide an assessment of whether an 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 adjustment in fees outside the addition of a fee for the actual permit would be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established and increased with this regulation. Items already in 201 KAR 12:030 had a fee schedule indicated for them previously and new items have similar fees per KRS 317A authority.

(9) TIERING: Is tiering applied? Tiering is not used in this agency.

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? Kentucky Board of Cosmetology is the only agency affected. No other areas of state or local government are affected by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A is the only statute that authorizes this action.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no expenditures needed or required by other agencies.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is a possibility of local occupational or income taxes to be collected as more individuals are placed in the workforce with these permits.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There is a possibility of income taxes to be collected as more individuals are placed in the workforce with these permits

(c) How much will it cost to administer this program for the first year? It will not cost any additional revenue for state or local governments.

(d) How much will it cost to administer this program for subsequent years? It will not cost any additional revenue for state or local governments.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: 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. There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

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

(c) How much will it cost the regulated entities for the first year? There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

(d) How much will it cost the regulated entities for subsequent years? There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

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

Cost Savings (+/-): N/A

Expenditures (+/-): N/A

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)] There will not be any major economic impact for any entities.

STATEMENT OF EMERGENCY 202 KAR 7:701E

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 reduce delays in EMT and AEMT certification eligibility and ensure adequate staffing of EMS agencies. Emergency medical services across the Commonwealth continue to experience staffing shortages. Consequently, many agencies are unable to provide the full extent of services that they would otherwise be capable of providing to their communities if they were fully staffed. The Board has taken a number of steps to address EMS staffing concerns. (Most recently, for example, the Board filed an emergency amendment to 202 KAR 7:560 on May 3, 2022. That amendment allows persons who are CPR-certified and have completed an emergency vehicle operator's course to drive ambulances until September 1, 2022 and, thereafter, permits certified EMRs to drive ambulances. Under the former version of 202 KAR 7:560, EMTs were required to drive ambulances. 202 KAR 7:560E was an effort to mitigate EMS staffing shortages by allowing additional personnel to perform duties without affecting the quality of care patients receive.) The goal of this emergency amendment is to further alleviate staffing shortages by permitting additional personnel to supervise students seeking certification as an EMT or AEMT and thereby reduce delays in students' eligibility to become certified providers.

Currently, students seeking to become EMTs or AEMTs must complete a specified number of patient contacts under the supervision of a licensed physician, registered nurse, or paramedic. (EMT students are required to have at least 10 supervised patient contacts to become certified, 5 of which must be contacts in a pre-hospital ambulance service setting. 202 KAR 7:601 § 10(4)(b). AEMT students are required to have at least 20 supervised patient contacts to become certified, 10 of which must be contacts made while the student is actively in the role of a team leader with a licensed ambulance service. *Id.* at § 11(3)(b).) Unlike paramedic

students, EMT and AEMT students do not typically perform their required clinical or field rotations in a hospital and, therefore, are typically supervised by paramedics rather than physicians or registered nurses. Due to agencies being short-staffed on paramedics and those paramedics that are on-duty being overworked, paramedics are often not available to go on runs with students. The lack of available paramedics has delayed EMT and AEMT students' ability to complete their required number of patient contacts and, consequently, delayed their ability to become certified. Such delays are further aggravating personnel shortages. This emergency amendment allows additional certified personnel to supervise EMT and AEMT students so that those students will be able to perform their required number of patient contacts in a more timely manner. Specifically, this emergency amendment allows certified EMTs and AEMTs to supervise EMT students, in addition to the currently permitted physician, registered nurse, or paramedic supervisors. Secondly, this emergency amendment allows certified AEMTs to supervise AEMT students, in addition to the currently permitted physician, registered nurse, or paramedic supervisors. By expanding the number of eligible supervisors, students will have more opportunities to complete their patient contact requirements, which will significantly accelerate their ability to become certified EMTs or AEMTs and thereby help fill the immediate need for additional personnel. The EMS personnel shortage and consequential lack of available preceptors for students and delayed EMT and AEMT certification eligibility pose an imminent threat to public health and safety. An ordinary administrative regulation could not immediately reduce delays in certification eligibility and, therefore, an ordinary administrative regulation is not sufficient. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. EMS staffing shortages are expected to continue and therefore, under the ordinary administrative regulation, certified EMTs and AEMTs will continue to be permitted to supervise EMT students and certified AEMTs will continue to be permitted to supervise AEMT students.

ANDY BESHEAR, Governor
PHILIP DIETZ, Chair

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

202 KAR 7:701E. Scope of practice matters.

RELATES TO: KRS 39A.050, 311A.135, 311A.140, 311A.160, 311A.165, 311A.170, 311A.175

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, 311A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This administrative regulation establishes the scope of practice.

Section 1. Emergency Medical Responder. (1) In addition to the skills and procedures established in the current National Highway Traffic Safety Administration National EMS Scope of Practice Model, emergency medical responders certified by the board shall be eligible to perform the supplemental procedures:

- (a) Cervical spine and spinal immobilization; and
- (b) Administration of Naloxone via Nasal Atomization Devices.

(2) To be eligible to perform a supplemental procedure established in subsection (1) of this section, an emergency medical responder shall have been trained and educated utilizing:

- (a) Kentucky Required Mandatory Supplemental Curriculum: EMR Spinal Immobilization (KBEMS-E-34); and
- (b) Kentucky Required Mandatory Supplemental Curriculum for the EMR in the Administration of Naloxone using a Nasal

Atomization Device (KBEMS-E-33).

(3) An out-of-state emergency medical responder may perform any skill or procedure that the emergency medical responder may use in the state in which the emergency medical responder is certified subject to the emergency medical responder being called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

(4) (a) An emergency medical responder shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

1. The emergency medical responder's medical director or designated on-line medical direction orders otherwise;

2. Compliance with approved protocols is not in the patient's medical best interest; or

3. The emergency medical responder does not have the equipment or medication to adhere to the protocol.

(b) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

Section 2. Emergency Medical Technician (EMT). (1) In addition to the skills and procedures established in the current National Highway Traffic Safety Administration National EMS Scope of Practice Model, an EMT certified by the board shall be eligible to perform the supplemental procedures:

(a) Identification of correct placement of an endotracheal tube (ETT) placed by a licensed paramedic, including the use of end tidal CO2 monitoring (EtCO2);

(b) Securing of an endotracheal tube that has been inserted by appropriately licensed personnel;

(c) The use of Blind Insertion Airway Devices (BIADs);

(d) Utilizing a cardiac monitor and troubleshooting potential problems;

(e) Selecting and applying cardiac electrodes;

(f) Non-interpretive acquisition and transmission of a 12-Lead Electrocardiogram (ECG);

(g) Appropriate utilization of equipment and sampling of blood glucose using a glucometer;

(h) Care for a saline lock site where a catheter has been dislodged;

(i) Administration of Epinephrine for anaphylaxis;

(j) Administration of Naloxone using a Nasal Atomization Device; and

(k) Administration of Albuterol using a Nebulizer.

(2) To be eligible to perform each of the supplemental procedures, an EMT shall have been trained and educated utilizing:

(a) Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Monitoring & Securing an ETT (KBEMS-E-38);

(b) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of Electrocardiogram Electrodes, Use of a Cardiac Monitor, and Acquisition and Transmission of a 12-Lead ECG (KBEMS-E-35);

(c) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT): Training in the Monitoring, Maintaining, and Discontinuing of Pre-established Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-Home Encounters (KBEMS-E-40);

(d) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of End-tidal Carbon Dioxide Monitoring (KBEMS-E-39);

(e) Kentucky Required Mandatory Supplemental Curriculum for the EMT in the Administration of Naloxone Using a Nasal Atomization Device (KBEMS-E-36);

(f) Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Blindly Inserted Airway Devices (BIADs) (KBEMS-E-37);

(g) Kentucky Required Mandatory Supplemental Curriculum for the EMT: Sampling of Blood Glucose Using a Glucometer (KBEMS-

E-41);

(h) Kentucky Required Mandatory Supplemental Curriculum: Administration of Epinephrine (KBEMS-E-42); and

(i) Kentucky Required Mandatory Supplemental Curriculum: Administration of Albuterol using a Nebulizer (KBEMS-E-43).

(3) An EMT shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

(a) The medical director or designated on-line medical direction orders otherwise;

(b) Compliance is not in the medical best interest of the patient; or

(c) The EMT does not have the equipment or medication to adhere to the protocol.

(4) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

(5) An out-of-state EMT may perform any skill or procedure that the EMT may use in the state in which the EMT is certified subject to the EMT being called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

Section 3. EMT Students. (1) During the didactic, laboratory, and clinical portions of an EMT course, an EMT student may perform any skill or procedure, or administer any medication within the scope of practice for an EMT as established by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure, or to administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the EMT course.

(2) During a field internship, an EMT student may perform any skill or procedure, or administer any medication within the scope of practice for an EMT as established by this administrative regulation, if:

(a) The student has written authorization by the medical director of the EMT course to perform the skill or procedure;

(b) Authorization to perform the skill or procedure is filed with the coordinator of the EMT course; and

(c) The medical director of the EMT course and the director of the agency for whom the skill or procedure is performed each give written permission to the EMT student to participate in a field internship with the agency.

(3) This administrative regulation shall not be construed to allow an emergency medical responder student ~~or~~ EMT student~~, AEMT student, or paramedic student~~ to perform any skill or procedure without direct supervision by a physician, registered nurse, ~~or~~ paramedic, ~~AEMT, or EMT~~, any of whom shall be licensed ~~or certified~~ in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 4. Advanced Emergency Medical Technician (AEMT). (1) An AEMT shall provide emergency medical services consistent with the current National Highway Traffic Safety Administration National EMS Scope of Practice Model.

(2) In addition to the skills and procedures in the National EMS Scope of Practice Model, the scope of practice of a Kentucky AEMT shall include the supplemental procedures:

(a) Quantitative and qualitative capnography and capnometry;

(b) Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure (BiPAP/CPAP) devices; and

(c) Establishing and maintaining an adult intraosseous infusion.

(3) To be eligible to perform each of the supplemental procedures, an AEMT shall have been trained and educated utilizing:

(a) Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using a Noninvasive Monitoring Device - Application and Interpretation of Quantitative Capnography and End Tidal Carbon Dioxide Monitoring (KBEMS-E30);

(b) Kentucky Required Mandatory Supplemental Curriculum for the AEMT - Intraosseous Infusion in the Adult (KBEMS-E-31); and

(c) Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure Devices (KBEMS-E-32).

(4) (a) An AEMT shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

1. The AEMT's medical director or designated on-line medical direction orders otherwise;
2. Compliance with approved protocols is not in the patient's medical best interest; or
3. The AEMT does not have the equipment or medication to adhere to the protocol.

(b) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

(5) If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact pursuant to KRS 39A.050, or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an AEMT certified in another state may perform the skills and procedures approved by the certifying state.

Section 5. AEMT Students. (1) During the didactic, laboratory, and clinical portions of an AEMT course, an AEMT student may perform any skill or procedure, or administer any medication within the scope of practice for an AEMT, as defined by this administrative regulation, if the student:

- (a) Has been trained and educated to perform the skill or procedure, or to administer the medication; and
- (b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the AEMT course.

(2) During a field internship, an AEMT student may perform any skill or procedure, or administer any medication within the scope of practice for an AEMT, as established by this administrative regulation, if:

- (a) The student has written authorization by the medical director of the AEMT course to perform the skill or procedure;
- (b) Authorization to perform the skill or procedure is filed with the coordinator of the AEMT course; and
- (c) The medical director of the AEMT course and the director of the agency for whom the skill or procedure is performed each give written permission to the AEMT student to participate in a field internship with the agency.

(3) This administrative regulation shall not be construed to allow an ~~[emergency medical responder student, EMT student,]~~AEMT student~~[, or paramedic student]~~ to perform any skill or procedure without direct supervision by a physician, registered nurse, ~~[or]~~paramedic, or AEMT, any of whom shall be licensed or certified in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 6. Paramedic. (1) A paramedic may perform any of the skills and procedures consistent with the current National Highway Traffic Safety Administration National EMS Scope of Practice Model.

(2) A paramedic shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

- (a) The medical director or designated on-line medical direction orders otherwise;
- (b) Compliance is not in the medical best interest of the patient; or
- (c) The paramedic does not have the equipment or medication to adhere to the protocol.

(3) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

(4) (a) A paramedic functioning in a position of employment may perform any procedure or administer medications authorized by KRS 311A.170 or this administrative regulation, at any location within the Commonwealth subject to the written approval of, and limitations established by the paramedic's medical director and the paramedic's employer.

(b) A paramedic performing skills or procedures outside of the

normal response area for the paramedic shall accompany and assist with or continue treatment for the patient until the patient is accepted by a receiving hospital, an ALS ground or licensed ALS air ambulance provider, or care is transferred to another licensed paramedic, receiving facility RN, advanced practice registered nurse (APRN), licensed physician's assistant, or physician.

(5)(a)1. An off-duty paramedic may perform any procedure or administer medications authorized by KRS 311A.170 or this administrative regulation, at any location within the Commonwealth subject to the written approval of, and limitations established by the paramedic's medical director and, if appropriate, the paramedic's employer; or

2. The paramedic may render care subject to the limitations of the paramedic's scope of practice at any location, if ordered to do so by a duly licensed physician.

(b) A paramedic performing skills or procedures outside of the normal response area for the paramedic shall accompany and assist with or continue treatment for the patient until the patient is accepted by a receiving hospital, an ALS ground or licensed ALS air ambulance provider, or care is transferred to another licensed paramedic, hospital emergency department, RN, advanced practice registered nurse (APRN), licensed physician's assistant, or physician.

(6) An out-of-state paramedic may perform any skill, procedure, or administer any medications that the paramedic may use in the state in which the paramedic is certified or licensed, subject to the control of the out-of-state paramedic's medical director or protocols and only in the following circumstances:

- (a) An out-of-state paramedic is transporting a patient from out-of-state to a Kentucky medical facility or other location in Kentucky;
- (b) An out-of-state paramedic is transporting a patient from out of state through Kentucky to another location out of state; or
- (c) An out-of-state paramedic is called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

(7) A paramedic with a critical care endorsement shall be authorized to perform the skills and procedures included in the paramedic's education and training subject to authorization by the medical director through established protocols in accordance with KRS Chapter 311A and 202 KAR Chapter 7.

Section 7. Paramedic Hospital Scope of Practice. (1) Paramedics functioning in the hospital environment shall perform within the scope of practice, as established in this administrative regulation.

(2) Employment of paramedics in hospital emergency department settings, exclusive of employment by air or ground transport components, or both, owned or operated by the hospital, shall be subject to demonstrating knowledge based and clinical competencies at a level satisfactory to the employing hospital and subject to KRS Chapter 311A and 202 KAR Chapter 7.

(3) An employer shall not require practice for a paramedic that exceeds the defined scope of practice established by KRS Chapter 311A and 202 KAR Chapter 7. The paramedic shall inform the employing institution or supervising staff of any inability or limitation to perform an ordered skill or procedure based upon:

- (a) A lack of knowledge of or training or education in the procedure or skill; or
- (b) The order or directive exceeding the paramedic's scope of practice.

(4) An employer may provide education or educational opportunities to expand the documented clinical practice of the paramedic but shall not do so with the intent of requiring the paramedic to perform skills or procedures exceeding the scope of practice established by KRS Chapter 311A and 202 KAR Chapter 7 while in the hospital's employ.

(5) A paramedic shall:

- (a) Maintain strict patient confidentiality;
- (b) Provide and assure continuity of care to patients;
- (c) Be a patient advocate;
- (d) Follow the hospital's chain of command;
- (e) Be knowledgeable and function within the scope of practice

of a paramedic;

(f) Be clearly identified as a licensed paramedic while functioning in the hospital's employ;

(g) Document on patient care records all interventions, treatments, and assessments performed by the paramedic;

(h) Perform patient assessment, which may include triage; and

(i) Institute appropriate therapy in the care of patients subject to the limitation of existing protocols.

Section 8. Paramedic Students. (1) During the didactic, laboratory, and clinical portions of a paramedic course, a paramedic student may perform any skill or procedure, or administer any medication within the scope of practice for a paramedic as established by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure or administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the paramedic course.

(2) During the field internship, a paramedic student may perform any skill or procedure, or administer any medication within the scope of practice for a paramedic as established by this administrative regulation, if:

(a) The student has written authorization by the medical director of the paramedic course to perform the skill or procedure;

(b) The permission is filed with the paramedic course coordinator of the paramedic course; and

(c) The medical director and director of the ambulance service each give written permission to the paramedic student to participate in a field internship with the ambulance service.

(3) This administrative regulation shall not be construed to allow ~~a[n emergency medical responder student, EMT student, AEMT student, or]~~ paramedic student to perform any skill or procedure without direct supervision by a physician, registered nurse, or paramedic, any of whom shall be licensed or certified in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 9. Restriction of Practice. This administrative regulation shall not prohibit a medical director from restricting the scope of practice of any emergency medical responder, EMT, AEMT, or paramedic under the medical director's authority through established protocols.

Section 10. Exemptions. This administrative regulation shall not prohibit an emergency medical responder, emergency medical technician, advanced emergency medical technician, or paramedic certified or licensed in another state or registered with the NREMT from functioning in accordance with the scope of practice established in KRS Chapter 311A and 202 KAR Chapter 7 while assisting with mass casualties, weapons of mass destruction, or disaster incidents.

Section 11. Incorporation by Reference. (1) The following documents are incorporated by reference.

(a) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using a Noninvasive Monitoring Device - Application and Interpretation of Quantitative Capnography and End Tidal Carbon Dioxide Monitoring", KBEMS-E-30, February 2007;

(b) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT Intraosseous Infusion in the Adult", KBEMS-E-31, February 2007;

(c) "Kentucky Required Mandatory Supplemental Curriculum for the AEMT using Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure Devices", KBEMS-E-32, February 2007;

(d) "Kentucky Required Mandatory Supplemental Curriculum for the EMR in the Administration of Naloxone Using a Nasal Atomization Device", KBEMS-E-33, February 2007;

(e) "Kentucky Required Mandatory Supplemental Curriculum: EMR Spinal Immobilization", KBEMS-E-34, February 2007;

(f) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of Electrocardiogram Electrodes, Use of a Cardiac Monitor, and Acquisition and Transmission of a 12-

Lead ECG", KBEMS-E-35, February 2007;

(g) "Kentucky Required Mandatory Supplemental Curriculum for the EMT in the Administration of Naloxone Using a Nasal Atomization Device", KBEMS-E-36, February 2007;

(h) "Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Blindly Inserted Airway Devices (BIADs)", KBEMS-E-37, February 2007;

(i) "Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Monitoring & Securing an ETT", KBEMS-E-38, February 2007;

(j) "Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of End-Tidal Carbon Dioxide Monitoring", KBEMS-E-39, February 2007;

(k) "Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT): Training in the Monitoring, Maintaining, and Discontinuing of Pre-established Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-Home Encounters", KBEMS-E-40, February 2007;

(l) "Kentucky Required Mandatory Supplemental Curriculum for the EMT: Sampling of Blood Glucose Using a Glucometer", KBEMS-E-41, February 2007;

(m) "Kentucky Required Mandatory Supplemental Curriculum: Administration of Epinephrine", KBEMS-E-42, February 2007;

(n) "Kentucky Required Mandatory Supplemental Curriculum: Administration of Albuterol Using a Nebulizer", KBEMS-E-43, February 2007; and

(o) "National Highway Traffic Safety Administration National EMS Scope of Practice Model", February 2007.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509~~[148 James Court, Suite 50, Lexington, Kentucky 40565]~~, Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chair

APPROVED BY AGENCY: June 30, 2022

FILED WITH LRC: July 12, 2022 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 24, 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 August 31, 2022. Send 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 7:701 establishes the scope of practice for individuals certified or licensed by the Board.

(b) The necessity of this administrative regulation: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the Board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This administrative regulation establishes

the scope of practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 by establishing the scope of practice for individuals licensed or certified by the Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the Board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This administrative regulation assists in the effective administration of the statutes by establishing the scope of practice.

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

(a) How the amendment will change this existing administrative regulation: This emergency amendment will allow students seeking certification as an EMT to be supervised by a certified AEMT or EMT when performing a skill or procedure, in addition to a physician, registered nurse, or paramedic who are currently the only personnel authorized to supervise EMT students. Additionally, this emergency amendment will allow students seeking certification as an AEMT to be supervised by a certified AEMT when performing a skill or procedure, in addition to a physician, registered nurse, or paramedic who are currently the only personnel authorized to supervise AEMT students. Finally, while this emergency amendment does amend the substantive requirements for paramedic student supervision, changes are made to Section 8(3) to clarify that the provision applies only to paramedics and that, in general, supervising personnel must be licensed or certified in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: This emergency amendment is necessary to mitigate staffing concerns. Specifically, due in part to staffing issues, there are not enough available paramedics to supervise students seeking EMT and AEMT certification from the Board. This has resulted in delays in students' ability to become certified, which has further aggravated staffing concerns.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the Board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This emergency amendment conforms to the content of these statutes by establishing the scope of practice.

(d) How the amendment will assist in the effective administration of the statutes: This emergency amendment will assist in the effective administration of KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 by establishing the scope of practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky EMS agencies and students seeking EMT or AEMT certification.

(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 on the part of EMS agencies. Students seeking EMT certification will be permitted to perform skills and procedures under the supervision of a licensed or certified physician, registered nurse, paramedic, AEMT, or EMT. Students seeking AEMT certification will be permitted to perform skills and procedures under the supervision of a physician, registered nurse, paramedic, or AEMT.

(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 personnel.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): All EMS agencies will benefit from students being able to be supervised by additional certified or licensed personnel, which will likely result in more available certified EMS personnel in a shorter amount of time than the current regulation would allow. All students seeking certification as an EMT or AEMT will benefit from being able to be supervised by additional personnel, which will likely result in students becoming certified in a shorter amount of time than the current regulation would allow.

(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 personnel.

(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 personnel.

(6) What is the source of 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 scope of practice requirements for all affected personnel.

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 EMS agencies and students seeking EMT or AEMT certification.

(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 503 KAR 1:140E

An emergency regulation, pursuant to KRS 13A.190(1)(a)(1), is necessary to comply with House Bill 206 (R.S. 2022) and to meet an imminent threat to public safety that would result from certification of officers convicted of a misdemeanor under KRS 510.120, 510.130, or 510.140; a second or subsequent offense under KRS 510.148; or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, sexual abuse, or sexual misconduct. These crimes will be added to KRS 15.382, the statute concerning the minimum requirements for certification of peace officers, effective on July 14, 2022. An ordinary administrative regulation will not go into effect by July 14, 2022. Therefore, this emergency administrative regulation is necessary for the certification process to comply with statutory mandates. This administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. No emergency administrative regulation governing the same subject matter has been filed within the previous nine months.

ANDY BESHEAR, Governor
JOHN MOBERLY, Executive Director

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Emergency Amendment)

503 KAR 1:140E. Peace officer, telecommunicator, and court security officer professional standards.

EFFECTIVE: July 13, 2022

RELATES TO: KRS Chapter 13B, 15.330(1)(f), 15.330(1)(h), 15.380, 15.382, 15.384(1), 15.392, 15.394(1), 15.396(1), 15.397(1), 15.400(1), 15.440, 15.540, 15.565, 15.580

STATUTORY AUTHORITY: KRS 15.330(1)(f), 15.330(1)(h), 15.382, 15.440, 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and

other persons having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.592. KRS 15.440 authorizes the council to promulgate administrative regulations for approval of basic training credit for out-of-state basic training and work experience. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification.

Section 1. Approval of Agency's Validated Job Task Analysis and Associated Agency Testing.

(1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to the KLEC office completed KLEC Forms J and Q along with a copy of the proposed job task analysis. The agency shall supply:

- (a) The name of the entity that completed the analysis;
- (b) The date on which the analysis was completed;
- (c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and

(d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.

(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

(a) Credentials and history of the entity conducting the analysis.

1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.

2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.

3. Number and quality of job task analyses completed.

(b) Methodological approach.

1. Reasonable, standardized format of the study and the report.

2. Relative reliability and validity of the study's sampling techniques and practice.

3. Other considerations that reflect sound practice of the scientific method.

4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.

(3) Initial review.

(a) Within five (5) business days of receipt of the application, the KLEC office shall notify the agency that:

1. The application has been received and is complete; or
2. The application is incomplete. The notice that an application is incomplete shall identify the specific information to be supplemented to process the application. The agency shall submit the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for consideration of its job task analysis and associated agency testing.

(b) The KLEC office recommendation. Within thirty (30) days of receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests and the specific reasons supporting a recommendation to reject.

(c) KLEC review. The KLEC Professional Standards Committee shall review the application and recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.

(d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:

1. The reasons for the finding; and
2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

Section 2. Agency Testing Procedures.

(1) Each agency participating in certification shall submit a completed KLEC Form Q or KLEC Form tele-Q to the KLEC office prior to any applicant testing. The KLEC office shall be notified of any changes in the Form Q or KLEC Form tele-Q within ten (10)

days.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC Form Q, the KLEC office shall notify the agency that the form:

(a) Has been received and is complete; or

(b) Is incomplete. The notice that an application is incomplete shall identify the specific information to be supplemented to process the form. The agency shall submit the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. Applicants shall not be tested or certified by KLEC until the form is complete.

(3) The KLEC office review of requests for agency testing. Within thirty (30) days of receipt of the completed form, the KLEC office shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. The KLEC office shall notify the agency if the proposed testing is acceptable. If the KLEC office determines that the minimum standards are not met, it shall forward the form to KLEC along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC Professional Standards Committee shall review the form and the recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of receipt of the form, KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected and the specific reasons supporting the rejection.

(5)(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:

1. With the Secretary of the Justice and Public Safety Cabinet;

and

2. Within thirty (30) days of receipt of the notice of rejection.

(b) The notice of appeal shall be submitted:

1. In writing; and

2. With a copy of the notice of rejection of agency testing attached.

(c) A copy of the notice of appeal shall also be mailed to the KLEC office by certified mail.

(d) The Secretary of the Justice and Public Safety Cabinet shall schedule a hearing within thirty (30) days of receipt of the notice of appeal.

(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 3. Certification of Peace Officers, Telecommunicators, and Court Security Officers.

(1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC Form E to the KLEC office.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC Form E to the KLEC office.

(3) An agency may request that peace officers identified in KRS 15.380(4), who have completed law enforcement basic training, and part-time telecommunicators, who have completed the Telecommunications Academy, participate in certification by submitting KLEC Form E to the KLEC office.

(4) Peace officers, telecommunicators, and court security officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1), 15.3971, 15.560, or 15.565 shall submit KLEC Form C.

Section 4. Suitability Minimum Requirements.[:] The minimum requirements and procedures established for KLEC testing by this section shall be followed.

(1) The background investigation as specified in KRS 15.382(12) and 15.3971(1)(k) shall consist of the following minimum requirements, using the KLEC Form H-1 Background Investigation and personal history questionnaire.

(a) Biographical history;

(b) Family history;

(c) Education;

(d) Employment history;

(e) Interview with the applicant's references;

(f) Criminal history including domestic violence protective orders; and

(g) Credit history.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5), 15.3971(1)(e), and 15.540(1)(c) through the procedure established by this subsection.

(a) The applicant shall be fingerprinted by the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent to the FBI for a records check.

(b) The KSP shall forward the results of state and FBI records check to the employing agency.

(c) Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI.

(d) The agency may employ the peace officer, telecommunicator, or court security officer contingent upon the pending FBI results.

(3) Psychological screening, as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d), shall consist of the minimum requirements established by this subsection.

(a) Screening shall measure a broad spectrum of abilities which are relevant to job related duties, including:

1. Cognitive abilities;

2. Personality characteristics; and

3. Related constructs, including:

a. Integrity; and

b. Conscientiousness.

(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.

(c)1. Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's overall suitability for employment as a peace officer, telecommunicator, or court security officer;

2. The summary statement shall classify applicants as:

a. Essentially suitable;

b. May be unsuitable; or

c. Borderline suitability; and

3. If an applicant is classified as borderline suitability or may be unsuitable, the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency.

(d) Screening shall be administered in accordance with the Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.

(4) Physical ability testing as specified in KRS 15.382(16) shall consist of the minimum requirements established by this subsection.

(a) Precertification status.

1. To obtain precertification status under KRS 15.386(1), the applicant shall successfully complete each of the events in the following order as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the KLEC Physical Fitness Testing Protocols:

a. Bench press;

b. Sit-ups;

c. 300 meter run;

d. Push-ups; and

e. One and five-tenths (1.5) mile run.

2. An applicant shall pass the physical ability test for precertification status if he or she achieves a cumulative score of fifty (50) points or more, based upon the following scoring of the physical training events listed in subparagraph 1 of this paragraph:

a. Bench press, based upon a percentage of the recruit's body

weight:

(i) 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;

(ii) 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;

(iii) 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;

(iv) 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and

(v) 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;

b. Sit-ups:

(i) 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;

(ii) 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;

(iii) 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and

(iv) 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

c. 300 meter run:

(i) 9 points - Recruit shall complete in sixty-eight (68) seconds or less;

(ii) 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;

(iii) 10 points - Recruit shall complete in sixty-five (65) seconds; and

(iv) 11 points - Recruit shall complete in less than sixty-five (65) seconds;

d. Push-ups:

(i) 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;

(ii) 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;

(iii) 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;

(iv) 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and

(v) 11 points - Recruit shall complete twenty-five (25) repetitions or more in two (2) minutes; and

e. One and five-tenths (1.5) mile run:

(i) 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;

(ii) 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;

(iii) 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;

(iv) 10.5 points - Recruit shall complete in at least 1,004 seconds (16:44) or less; and

(v) 11 points - Recruit shall complete in 975 seconds (16:15) or less.

3. An applicant shall not be awarded more than eleven (11) points in any one (1) of the five (5) physical ability events.

4. An applicant shall fail the physical ability test for precertification status if he or she does not achieve:

a. A cumulative score of at least fifty (50) points for all five (5) events; and

b. At least nine (9) points on each physical training event.

5. At the sole discretion of the hiring agency, an applicant who fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, subject to the conditions established by this subparagraph.

a. A retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required cumulative fifty (50) point minimum.

b. A retest shall not occur any sooner than forty-eight (48) hours or any later than sixty (60) days from the date of the initial test attempt.

6. If an applicant obtains a point value for each event, but does not obtain a cumulative score of at least fifty (50) points, the applicant may attempt the test battery again, in its entirety. This shall

be considered a second test administration and not a retest.

7. An applicant may participate in the physical ability test for precertification status in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

8. An applicant may participate in one (1) physical ability retest for each physical ability test taken for precertification status.

(b) Certification status.

1. To obtain certification status under KRS 15.386(2), the applicant shall successfully complete each of the following physical ability requirements within ten (10) days of graduation from law enforcement basic training, which shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols:

a. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the applicant's body weight;

b. Sit-ups. Nineteen (19) sit-ups in one (1) minute;

c. 300 meter run in less than sixty-five (65) seconds;

d. Push-ups. Twenty-five (25) push-ups; and

e. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

2. If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements for certification status.

3. Retest. If an applicant fails to pass all events when participating in the physical ability test for certification status during the training graduation test:

a. The applicant shall not retest in the failed events earlier than forty-eight (48) hours after the date the test is originally administered;

b. All failed events shall be retested on the same date; and

c. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability test requirements for certification status.

(5) Medical screening as specified in KRS 15.382(10) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall complete KLEC Form G-2, Medical History Statement, which, along with KLEC Form G-3, Medical Screening Guidelines Implementation Manual, shall be provided to the physician, nurse practitioner, or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.

(b) The agency shall provide the examining physician, nurse practitioner, or physician's assistant with a copy of the KLEC Form T-1a, Physician's Medical Release Form.

(c) The physician, nurse practitioner, or physician's assistant shall complete KLEC Form G-1, Medical Examination Report, and forward it to the employing agency.

(6) Drug screening as specified in KRS 15.382(11), 15.3971(1)(j), and 15.540(1)(f) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall execute KLEC Form K-1 and submit a urine sample that shall be screened and if necessary confirmed using the guidelines as outlined in the Mandatory Guidelines for Federal Workplace Drug Testing Programs, 82 Fed. Reg. 7920-1 (Jan. 23, 2017). The screening and confirmatory cutoff concentrations are as follows:

SCREENING	
Marijuana metabolites	50 ng/mL
Cocaine metabolite (Benzoyllecgonine)	150 ng/mL
Codeine / Morphine	2,000 ng/mL
Hydrocodone / Hydromorphone	300 ng/mL
Oxycodone / Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine / Methamphetamine	500 ng/mL
MDMA / MDA	500 ng/mL
CONFIRMATION	
THC/THCA	15 ng/mL
Benzoyllecgonine	100 ng/mL
Codeine	2,000 ng/mL
Morphine	2,000 ng/mL

Hydrocodone	100 ng/mL
Hydromorphone	100 ng/mL
Oxycodone	100 ng/mL
Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine	250 ng/mL
Methamphetamine	250 ng/mL
MDMA	250 ng/mL
MDA	250 ng/mL

(b) The integrity of the urine sample shall be documented on KLEC Form K-2, Drug Screening through Urinalysis Chain of Custody.

(7) For the polygraph examination as specified in KRS 15.382(17), 15.3971(1)(n), and 15.540(1)(e), the applicant shall complete KLEC Form I-1, Consent for Pre-employment Polygraph Examination, and KLEC Form I-2, Pre-employment Polygraph Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant.

(8) The agency shall ensure that the applicant receives and has read KLEC Form L-1, Code of Ethics and KLEC Form L-2, Canon of Ethics.

(9) High school diploma.

(a) The high school graduate requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b) shall be met by:

1. Submission of a copy of a diploma or transcript from a public high school; or

2. Submission of a diploma or transcript from a private high school that:

a. Is certified by or recognized by the Kentucky Department of Education; or

b. Has complied with all provisions of Kentucky law relating to private or other non-public secondary schools as applicable, including days and hours of attendance and course curriculum. The applicant shall also submit a completed Applicant Education Verification form.

(b) A document purporting to be a high school or college diploma and obtained through the internet or by mail order shall not satisfy the requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b).

Section 5. KLEC Administered Testing Procedures.

(1) An applicant shall execute all releases required for KLEC testing, including:

(a) KLEC Form I-1 - Consent for Pre-employment Polygraph Examination;

(b) KLEC Form K-1 - Drug Screening through Urinalysis Applicant Consent Form;

(c) KLEC Form T-1 - Medical Release - Phase I Testing; and

(d) KLEC Form T-2 - Liability Waiver - Phase I Testing.

(2) Testing schedule.

(a) The KLEC office shall publish online or otherwise make available to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered testing.

(b) Testing sites shall be statewide and accommodations shall be made where reasonable to ensure testing sites are accessible based upon need.

(c) Advance notice of the schedule shall be made public prior to the testing.

(d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training as needed.

(3) Registration for KLEC administered testing. The KLEC office shall receive KLEC Form A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification when the testing is administered.

(b) The KLEC office shall receive the completed polygraph questionnaire KLEC Form I-2 when the testing is administered.

Section 6. Test Reporting by KLEC.

(1) Results of tests provided by or through the KLEC office shall be forwarded to the employing agency head.

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC Form D. The information from the completed form shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(3) Length of test result validity.

(a) Physical ability for precertification status results shall be considered current and valid one (1) year from the passing date of the test.

(b) Suitability screening results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new suitability screening for the applicant.

(c) Polygraph examination results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant who leaves and reenters the testing process for preselection screening shall submit to another drug screening.

(4) Updating test results. The employing agency shall update test results if necessary by submitting KLEC Form D to the KLEC office.

(5) Agency access to prior test results.

(a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing, which is still current and valid.

(b) If agencies enter into an agreement with the written permission of the applicant, the new employing agency shall receive the medical, suitability, and polygraph results directly from the agency that initially requested testing of the applicant.

(c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

Section 7. Test Reporting by Agency.

(1) An agency that performs physical ability testing based upon the requirements in Section 4 of this administrative regulation shall report all test results by submitting a POPS Form PT-1, Physical Agility Test Session Report, to the KLEC within ten (10) days of administering the test.

(2) An agency that performs physical ability testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.

(3) Physical ability test results shall be reported to the KLEC office regardless of whether the applicant:

(a) Passes or fails the test; or

(b) Performs or completes every component of the physical ability test.

Section 8. KLEC Administered Testing Costs.

(1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

(a) Sixty-five (65) dollars for each psychological screening;

(b) \$100 for each polygraph examination; and

(c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:

1. The actual approved budget of the governmental unit for the current and the preceding year;
2. The number of certification applicants for the current and preceding year;
3. The actual revenue receipts of the governmental unit for the current and the preceding year; and
4. A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that adequate funding was not budgeted to cover the cost of testing.

(b) Initial review. Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that:

1. The application has been received and is complete; or
2. The application is incomplete and shall identify the specific information to be supplemented to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

(c) Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the application for financial hardship and the specific reasons supporting a recommendation to reject.

(d) KLEC review.

1. The KLEC Committee on Professional Standards shall review the application and the recommendation of the KLEC office and forward their recommendation to KLEC for final review.

2. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected and shall provide the specific reasons supporting the rejection.

(e) Appeal.

1. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.

2. The notice shall be filed within thirty (30) days of receipt of the notice of rejection.

3. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of financial hardship attached.

4. A copy of the notice of appeal shall be delivered to the KLEC office by certified mail.

5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office shall immediately notify DOJT.

Section 9. Employment Changes.

(1) Pursuant to KRS 15.392 and 15.580 if a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC Form F.

(2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency the employing agency shall submit KLEC Form F within five (5) business days of the employment or appointment. Additionally, the agency shall submit KLEC Form D-1 for returning peace officers or court security officers.

(3) Information from completed KLEC Forms F shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

Section 10. Out-of-state, Military, and Federal Law Enforcement and Telecommunications Basic Training.

(1) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic

training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was equal to or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers when the course was completed by the applicant, as determined by the executive director of the Office of Kentucky Law Enforcement Support;

(b) The basic training course or academy is a single, stand-alone course;

(c) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency; and

(d) The peace officer completes the following courses presented by the Department of Criminal Justice Training within one (1) year of his or her hiring by the Kentucky law enforcement agency. For purposes of meeting the hourly requirement in paragraph (a) of this subsection, the number of hours of these courses shall be added to the number of hours taken in the out-of-state basic training course:

1. The twenty-four (24) hour legal update Penal Code course;
2. The sixteen (16) hour legal update constitutional procedure course;

3. On-line Federal Emergency Management Agency ICS 100, ICS 200, and IS 700 courses (or current equivalent). A Certificate of Completion or official transcript shall satisfy this requirement; and

4. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:

- a. Basic officer skills;
- b. Orientation for new police chiefs; or
- c. Mandatory duties of the sheriff.

(2) An applicant to a Kentucky law enforcement agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was at least 300 hours, but less than the number of hours required for Kentucky peace officers;

(b) The peace officer has been employed in a full-time capacity as a peace officer for three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy;

(c) The basic training course or academy is a single, stand-alone course; and

(d) The peace officer completes the courses as required in subsection (1)(d) of this section with the number of hours of these courses added to the number of hours taken in the out-of-state basic training course in subsection (2)(a) of this section.

(3) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a law enforcement or telecommunications basic training course or academy while serving in the United States military may be certified by the KLEC if:

(a) 1. The basic training course or academy corresponded with or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, as determined by the Executive Director of the Office of Kentucky Law Enforcement Support; or

2. The basic training course or academy did not correspond with or exceed the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, a basic training credit of fifty (50) hours for each year of his or her full-time peace officer service together with the basic training course hours shall be granted to allow compliance with the total hours required by KRS 15.440, 503 KAR 1:110, or another administrative regulation modifying the hours; and

(b) The basic training course or academy was a single, stand-alone course.

(4) An applicant to a Kentucky law enforcement agency who has graduated from one (1) of the following Federal law enforcement basic training courses may be certified by the KLEC:

- (a) Federal Bureau of Investigation;

- (b) Bureau of Alcohol, Tobacco, and Firearms;
- (c) Drug Enforcement Administration; or
- (d) United States Secret Service.

(5) The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.

(6) An agency may request certification for a peace officer who has completed an out-of-state law enforcement basic training by submitting for the applicant:

- (a) A certificate of completion or other official documentation showing completion of basic training;
- (b) A transcript of classes for basic training with individual class hours specified; and

(c) A letter from an employing agency signed by the chief or a direct supervisor of the applicant certifying, or other official documentation showing, that the applicant was employed in a full-time capacity as a peace officer for:

- 1. At least one (1) year; or
- 2. Three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy.

(7) An applicant to a Kentucky law enforcement or telecommunications agency seeking certification under this section shall not be certified unless he or she has worked in a full-time capacity as a peace officer within five (5) years of applying for certification in Kentucky.

Section 11. Records.

(1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the records retention schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030.

(2) Security. The KLEC office and employing agencies shall maintain records in a manner to ensure their security. To properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2), a law enforcement or telecommunications agency shall keep all records relating to certification in a file separate from any personnel file maintained by the hiring authority.

(3) For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in the agency file a KLEC FORM POPS P, Certification of Peace Officer Professional Standards Testing Procedures, KLEC Form Q-3 – Drug Screening Approval, KLEC Form Q-4 – Polygraph Approval, and KLEC Form Q-5 – Suitability Screener Approval, indicating that the following testing procedures have been completed:

- (a) Polygraph;
- (b) Suitability screening;
- (c) Drug screen; and
- (d) Medical examination or history statement.

(4) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer regardless of where the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(5) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

Section 12. Applicant Conduct and Behavior.

(1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with KRS Chapter 13B, may be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume, or be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a

physician while participating in the testing process.

(b) An applicant shall advise the KLEC test administrator in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician.

(c) An applicant shall not participate in physical ability testing if:

1. The applicant has taken:

- a. A controlled substance as prescribed by a physician; or
- b. Any other medication, whether prescribed or not; and

2. The applicant is under the influence of the controlled substance or medication to the extent that the applicant may be impaired or is a danger to self or others.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of testing, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) The KLEC shall notify the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing. The notice shall state the supporting reasons and circumstances of the removal and whether the agency may reschedule testing.

Section 13. Compliance.

(1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, to audit specific applicants and agencies to ensure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of participation in Kentucky Law Enforcement Foundation Program Fund (KLEFPF). If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14. Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office upon loss of certification.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014;

(b) "KLEC Form A - Testing Registration - Attesting to Minimum Standards", 2021;

(c) "KLEC Form C - Grandfather Information", 2021;

(d) "KLEC Form D - All Standards Met", 2022[2024];

(e) "KLEC Form D-1 – All Standards Met – Inactive to Active Status", 2022[2024];

(f) "KLEC Form E - Request for Certification for Exempt Officers", March 1, 1999;

(g) "KLEC Form F - Status Update", 2021;

(h) "KLEC Form G-1 - Medical Examination Report", 2021;

(i) "KLEC Form G-2 - Medical History Statement", 2021;

(j) "KLEC Form G-3 - Medical Screening Guidelines Implementation Manual", 2021;

(k) "KLEC Form H-1 - Background Investigation", 2021;

(l) "KLEC Form I-1 - Consent for Pre-employment Polygraph

Examination", 2021;

(m) "KLEC Form I-2 - Pre-employment Polygraph Questionnaire", 2021;

(n) "KLEC Form J - JTA Submission", January 19, 1999;

(o) "KLEC Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form", 2021;

(p) "KLEC Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form", 2021;

(q) "KLEC Form L-1 - Code of Ethics", 2021;

(r) "KLEC Form L-2 - Canon of Ethics", 2021;

(s) "KLEC Form Q - Agency Submission Form", 2021;

(t) "KLEC Form Q-3 - Drug Screening Approval", 2021;

(u) "KLEC Form Q-4 - Polygraph Approval", 2021;

(v) "KLEC Form Q-5 – Suitability Screener Approval", 2021;

(w) "KLEC Form tele-Q - Agency Submission Form", 2021;

(x) "KLEC Form T-1 - Medical Release - Phase I Testing", 2021;

(y) "KLEC Form T-1a - Physician's Medical Release Form",

2021;

(z) "KLEC Form T-2 - Liability Waiver - Phase I Testing", 2021;

(aa) "POPS Form PT-1 - Physical Agility Test Session Report", 2021;

(bb) "POPS Form P - Certification of Peace Officer Professional Standards Testing Procedures", July 2004;

(cc) "KLEC Physical Fitness Testing Protocols", 2021; and

(dd) "KLEC Education Form - Applicant Education Verification", 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Law Enforcement Council, 4449 Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the council's Web site at <https://klecs.ky.gov/>.

JOHN MOBERLY, Executive Director

APPROVED BY AGENCY: July 7, 2022

FILED WITH LRC: July 13, 2022 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2022, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Justice.RegContact@ky.gov, telephone number (502) 564-8207, facsimile number (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes approval requirements to show compliance with professional standards to meet certification requirements for law enforcement officers and telecommunications employed by law enforcement agencies, and court security officers.

(b) The necessity of this administrative regulation: KRS 15.330 requires the Kentucky Law Enforcement Council (KLEC) to set minimum standards for training for certification and approving law enforcement officers and telecommunications who have met the requirements for certification. This regulation establishes the minimum standards and approval process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330 authorizes the council to

promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. KRS 15.330(1)(h) and KRS 15.590 authorize the council to promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and concerning training, in-service training, and telecommunications practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation gives staff and applicants for certification guidance on the requirements to be approved by the council.

(2) If 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 revises two forms incorporated by reference to comply with changes to the minimum qualifications for certification for law enforcement officers in KRS 15.382 involving additional crimes that prevent certification.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary due to changes in KRS 15.382(6).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330 authorizes the KLEC to approve law enforcement officers, telecommunications, and court security officers as having met requirements under KRS 15.310 to 15.510 and 15.530 to 15.590. KRS 15.330(1)(h) authorizes the KLEC to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. KRS 15.440 allows the council to promulgate administrative regulations for approval of basic training credit for out of state basic training and work experience. The amendment addresses the statutory changes in KRS 15.382(6) that change the minimum standards for certification for law enforcement officers. The council has authority over the forms used in the certification process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the process for individuals becoming certified peace officers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KLEC, the approximately 400 law enforcement agencies in the Commonwealth, the approximate 10,000 law enforcement, telecommunications, and court security personnel who are required to be certified in the Commonwealth, and any individuals seeking certification as law enforcement, telecommunications, or court security personnel.

(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 revised forms will need to be used for peace officer certification applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are anticipated from the form changes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applications will comply with the statutory minimum requirements for peace officer certification.

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

(a) Initially: No additional costs are anticipated.

(b) On a continuing basis: No additional costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment is not anticipated to increase implementation or enforcement costs for the council or for any regulated entity. Generally, the council is funded through appropriations from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation

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establishes any fees or directly or indirectly increases any fees: The existing regulation established fees for testing. The amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied because the administrative regulation applies equally to all those individuals or 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? The Kentucky Law Enforcement Council and various law enforcement and telecommunications agencies whose employees must be certified.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330, 15.380, 15.440, 15.590.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the 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 does not provide revenue to any government entity, aside from the nominal testing fees already charged under the existing administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment does not provide revenue to any government entity, aside from the nominal testing fees already charged under the existing administrative regulation.

(c) How much will it cost to administer this program for the first year? The amendment is not anticipated to increase costs.

(d) How much will it cost to administer this program for subsequent years? The amendment is not anticipated to increase costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? No cost savings are anticipated from the form changes to comply with the statute revisions.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated from the form changes to comply with the statute revisions.

(c) How much will it cost the regulated entities for the first year? No additional costs are anticipated from the form changes to comply with the statute revisions.

(d) How much will it cost the regulated entities for subsequent years? No additional costs are anticipated from the form changes to comply with the statute revisions.

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 form changes are made to comply with statute revisions and no major economic impact is anticipated.

STATEMENT OF EMERGENCY 803 KAR 25:089E

The Department of Workers' Claims must amend this administrative regulation by emergency to comply with KRS 342.035(1) which requires that the schedule of fees be reviewed and updated, if appropriate, every two (2) years on July 1. Medical costs in the workers' compensation system shall be fair, current, and reasonable for similar treatment in the same community where paid for by general insurers. The medical fee schedule meets this statutory guideline. By complying with that statutory guideline, the medical fee schedule update insures injured employees receive quality and appropriate health care and medical providers are appropriately compensated. This emergency regulation complies with the statutory mandate of being in place by July 1 and protects human health and public health, safety, and welfare by updating medical costs. The administrative regulation currently in effect incorporates the 2020 fee schedule. After review, it was necessary to update and revise the 2020 fee schedule to address current medical costs. Because KRS 342.035(1) requires the medical fee schedule to be updated in order to remain fair, current, and reasonable, the current regulation must be amended to incorporate the 2022 fee schedule. This emergency regulation will be replaced by an ordinary administrative regulation. The schedule of fees provided in this emergency administrative regulation cannot be provided through an ordinary administrative regulation because the ordinary rulemaking process cannot be completed in time to meet the statutory requirements. 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

SCOTT C. WILHOIT, Commissioner

LABOR CABINET Department of Workers' Claims (Emergency Amendment)

803 KAR 25:089E. Workers' compensation medical fee schedule for physicians.

EFFECTIVE: June 24, 2022

RELATES TO: KRS 342.0011(32), 342.019, 342.020, 342.035

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges, and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. KRS 342.035(4) requires the commissioner to promulgate an administrative regulation establishing the workers' compensation medical fee schedule for physicians. Pursuant to KRS 342.035, a schedule of fees is to be reviewed and updated, if appropriate, every two (2) years on July 1. This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions.

(1) "Medical fee schedule" means the 2022 Kentucky Workers' Compensation Schedule of Fees for Physicians[2020–Kentucky Workers' Compensation Schedule of Fees for Physicians].

(2) "Physician" is defined by KRS 342.0011(32).

Section 2. Services Covered.

(1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter

342.

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) Another fee schedule of the Department of Workers' Claims applies;

(b) A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110; or

(c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

Section 3. Fee Computation.

(1) The appropriate fee for a procedure or item covered by the medical fee schedule shall be the Maximum Allowable Reimbursement (MAR) listed in the 2022[2020] Kentucky Workers' Compensation Schedule of Fees for Physicians for those procedures or items for which a specific monetary amount is listed.

(2) Procedures Listed Without Specified Maximum Allowable Reimbursement Monetary Amount: The appropriate fee for a procedure or item for which no specific monetary amount is listed shall be determined and calculated in accordance with numerical paragraph six (6) of the General Instructions of the medical fee schedule unless more specific Ground Rules are applicable to that service or item, in which case the fee shall be calculated in accordance with the applicable Ground Rules.

(3) The resulting fee shall be the maximum fee allowed for the service provided.

Section 4.(1) A physician or healthcare or medical services provider located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it treats a patient who is covered under KRS Chapter 342.

(2) Pursuant to KRS 342.035, medical fees due to an out-of-state physician or healthcare or medical services provider shall be calculated under the fee schedule in the same manner as for an in-state physician.

Section 5. Incorporation by Reference.

(1) "2022 Kentucky Workers' Compensation Schedule of Fees for Physicians", July 1, 2022 Edition [~~"2020 Kentucky Workers' Compensation Schedule of Fees for Physicians", July 1, 2020 Edition~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify the Commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.

SCOTT C. WILHOIT, Commissioner

APPROVED BY AGENCY: June 21, 2022

FILED WITH LRC: June 24, 2022 at 10:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 31, at 10:00 a.m. (EDT) at the Department of Workers' Claims, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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: B. Dale Hamblin, Jr., Assistant General

Counsel, Workers' Claims Legal Division, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the medical fee schedule for physicians and the requirements for using the fee schedule.

(b) The necessity of this administrative regulation:

Pursuant to KRS 342.035, the commissioner is required to promulgate an administrative regulation regarding fee schedules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates the extensive fee schedule for physicians and requirements for the fee schedule.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have fee schedules to control the medical costs of the workers' compensation system. Injured employees should receive quality medical care and physicians should be appropriately paid.

(2) If 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 medical fee schedule has been updated and will be incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: KRS 342.035 requires the schedule of fees to be reviewed and updated every two (2) years, if appropriate.

(c) How the amendment conforms to the content of the authorizing statutes: The schedule of fees has been appropriately updated to ensure that medical fees are fair, current, and reasonable for similar treatment in the same community for general health insurance payments.

(d) How the amendment will assist in the effective administration of the statutes: The schedule of fees assists the workers' compensation program by updating fees for physicians to insure injured workers get qualified and appropriate medical treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, injured employees, insurance carriers, self-insurance groups, and self-insured employers and employers, third party administrators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Insurance carriers, self-insured groups, self-insured employers, third party administrators, and medical providers must purchase the new schedule of fees to accurately bill and pay for medical services. Other parties to workers' compensation claims are only indirectly impacted by the new fee schedule.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Insurance carriers, self-insured groups, self-insured employers or third party administrators and medical providers can purchase the fee schedule book with disk for \$120 or the disk for \$60.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medical providers will receive fair, current, and reasonable fees for services provided to injured workers. Injured workers will be treated by qualified medical providers.

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

(a) Initially: The contract for reviewing and updating the

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physicians fee schedule is \$66,935.00. The cost for printing is \$1,749.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding 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 sets forth a current schedule of fees to be paid to physicians. Fees have been updated to be fair, current, and reasonable for similar treatment in the same community as paid by health insurers.

(9) TIERING: Is tiering applied? Tiering is not applied, because the updated fee schedule applies to all parties 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? The Department of Workers' Claims and all parts of government with employees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. As an employer, there may be some increased costs for medical services. It is impossible to estimate not knowing what medical services will be needed by injured workers.

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

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

(c) How much will it cost to administer this program for the first year? There are no new administrative costs.

(d) How much will it cost to administer this program for subsequent years? There are no new administrative costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? Medical payment obligors can be assured reimbursement payments are fair, current, and reasonable for services provided to injured workers. Injured workers will be treated by qualified medical providers. Without knowing what the cost for medical treatment would have been without the fee schedule it is impossible to estimate the savings.

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

(c) How much will it cost the regulated entities for the first year? Insurance carriers, self-insured groups, self-insured employers or third party administrators and medical providers can purchase the fee schedule book with disk for \$120 or the disk for \$60.

(d) How much will it cost the regulated entities for subsequent years? Nothing the second year. The fee schedule is updated every

two (2) years; it is unknown what the cost will be 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 (+/-): Unknown.

Expenditures (+/-): \$120 or \$60 in the first year.

Other Explanation: Insurance carriers, self-insured groups, self-insured employers, third party administrators, and medical providers must purchase the new schedule of fees to accurately bill and pay for medical services. Other parties to workers' compensation claims are only indirectly impacted by the new fee schedule.

(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 amendment to this administrative regulation will not have a major economic impact.

STATEMENT OF EMERGENCY 901 KAR 5:120E

This emergency administrative regulation is being promulgated to implement the requirements of 2022 Ky. Acts ch. 210. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to implement the expanded abortion reporting requirements. This emergency administrative regulation is necessary to implement 2022 Ky. Acts ch. 210, which expands the information required to be reported for each abortion and requires the cabinet to promulgate the administrative regulation within sixty (60) days of the passage of the Act. This emergency administrative regulation will be replaced by an ordinary administrative regulation. This ordinary administrative regulation is identical to this emergency administrative regulation.

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)

901 KAR 5:120E. Abortion reporting.

EFFECTIVE: June 30, 2022

RELATES TO: KRS 213.101, 213.106, 311.595, 311.720, 311.774, 311.781, 311.782, 311.783

STATUTORY AUTHORITY: KRS 194A.050(1), 213.021, 213.101(1), (7), 2022 Ky. Acts ch. 210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 213.101(1) requires each abortion that occurs in the commonwealth to be reported to the Office of Vital Statistics. KRS 213.101(7) requires the Office of Vital Statistics to promulgate administrative regulations to assist in compliance with that statute. 2022 Ky. Act ch. 210 expanded the abortion reporting requirements to include the full name and address of the physician and facility, the age of the father, if known, the Rh negative status of the patient, if the patient was treated for a sexually transmitted disease, the reason for the abortion, any follow-up treatment provided, and additional prescription information. This administrative regulation establishes the reporting criteria for abortions.

Section 1. Definitions. (1) "Abortion" is defined by KRS 311.720(1).

(2) "Probable post-fertilization age" is defined by KRS 311.781(6).

(3) "Reasonable medical judgment" is defined by KRS 311.781(7).

(4) "Serious risk of the substantial and irreversible impairment of a major bodily function" is defined by KRS 311.781(8).

Section 2. Reporting. (1) A person or institution shall comply with the reporting requirements of KRS 213.101(1) and (2).

(2) The report shall be filed irrelevant of the gestational age or probable post-fertilization age of the fetus at the time of the abortion.

(3) The report shall be made within three (3) days after the end of the month in which the abortion was performed through the cabinet's electronic database or on VS-913, Report of Abortion.

(4) The report shall:

(a) Contain the information required to be certified in writing including the following:

1. The probable post-fertilization age of the unborn child;

2. Whether the abortion was necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman;

3. The available methods or techniques considered and the reasons for choosing the method or technique employed;

4. Whether the physician determined in his or her reasonable medical judgment that termination of the pregnancy in the manner selected provides the best opportunity for the unborn child to survive;

5. If the physician did not choose the method of abortion that provides the best chance of survival for the unborn child, whether the pregnancy termination in that manner would have posed a greater risk of death of the pregnant woman or a greater risk of substantial and irreversible impairment of a major bodily function of the pregnant woman than other available methods of abortion; and

6. Any complications known to the provider as a result of the abortion, as set forth in KRS 311.774(3); and

(b) Not contain information that identifies the [physician;] woman[;] or man involved.

(5) Pursuant to KRS 213.106, a report shall be used in accordance with the provisions of KRS 213.101.

Section 3. Prescription Reporting. (1) In accordance with KRS 213.101(2), each prescription for a drug or combination of drugs for which the primary indication is the induction of abortion shall be reported by the physician prescribing the medication and the pharmacy dispensing the medication within three (3)[fifteen (15)] days after the end of the month in which the prescription was issued.

(2) The report shall be made through the cabinet's electronic database or on VS-913P, Abortion Prescription Reporting Form.

(3) The report shall:

(a) Contain the drug or combination of drugs prescribed;[and]

(b) The information required by 2022 Ky. Acts ch. 210; and

(c) Not contain information that identifies the [physician;] woman[;] or man involved.

Section 4. Penalties. Failure to comply with the provisions of KRS 213.101(1) shall subject the reporting person or institution to the penalties provided in KRS 213.101(5) and (6).

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

(a) Form VS-913P, "Abortion Prescription Reporting Form", 6/2022[4/2020]; and

(b) Form VS-913, "Report of Abortion", 6/2022[4/2020].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may be obtained, subject to applicable copyright law, at <https://chfs.ky.gov/agencies/dph/dehp/vsb/Pages/abreqadr.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 27, 2022

FILED WITH LRC: June 30, 2022 at 12:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 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 August 15, 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 August 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 emergency administrative regulation establishes the criteria for reporting abortions as described in KRS 213.101 and 2022 Ky. Acts ch. 210.

(b) The necessity of this administrative regulation: KRS 213.101(7) requires the Office of Vital Statistics (OVS) to promulgate administrative regulations for compliance with the reporting requirements of the statute. This emergency administrative regulation is necessary to ensure that each abortion that occurs in the commonwealth is reported to OVS in a timely manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 213.101 requires the reporting of each abortion that occurs in the commonwealth and requires OVS to issue a public report by September 30 each year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation allows OVS to compile statistical data regarding the number of abortions that occur yearly and the abortion procedures utilized.

(2) If 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 updates the material incorporated by reference for compliance with 2022 Ky. Acts ch. 210.

(b) The necessity of the amendment to this administrative regulation: This emergency amendment to this administrative regulation is necessary to implement 2022 Ky. Acts ch. 210, which expands the information required to be reported for each abortion and requires the cabinet to promulgate the administrative regulation within sixty (60) days of the passage of the Act. The report forms incorporated by reference were amended to include all required data elements.

(c) How the amendment conforms to the content of the authorizing statutes: 2022 Ky. Act ch. 210 expanded the abortion reporting requirements to include the full name and address of the physician and facility, the age of the father, if known, the Rh negative status of the patient, if the patient was treated for a sexually transmitted disease, the reason for the abortion, any follow-up treatment provided, and additional prescription information.

(d) How the amendment will assist in the effective administration

of the statutes: The emergency amendment to this administrative regulation will ensure all required elements are reported to the cabinet.

(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 any woman seeking an abortion and the physician who performs the abortion. On average, there are 2,616 abortions performed each year. The Office of Vital Statistics within the Department for Public Health will also be impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians who perform abortions will need to be aware of the changes in reporting requirements, will need to monitor a woman who has received an abortion for complications, and will need to make reasonable efforts to ensure the woman receives any necessary follow-up treatment. Pharmacies that dispense the medications will need to be aware of the reporting requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Physicians and pharmacists reporting abortions will have no additional costs associated with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the reporting requirements, physicians who perform abortions will be in full compliance with the authorizing statutes and will avoid any penalties that would result from violating the statutes. By complying with the medication reporting requirements, pharmacists will be in compliance with the authorizing statutes and will avoid any penalties that would result from violating the statutes.

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

(a) Initially: The required changes to the current reporting data system will cost \$48,000 to implement.

(b) On a continuing basis: Ongoing costs for maintenance of the reporting data system and production of the required reports will be \$18,000 yearly. Staff costs for the Office of Vital Statistics to implement this administrative regulation is \$6,000 yearly.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds 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: This amendment does not require an increase in fees or funding for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no increase in, or establishment of, fees associated with this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation impacts all affected 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? This administrative regulation will impact the Office of Vital Statistics within the Division of Epidemiology and Health Planning in the Department for Public Health, Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 213.021, 213.101(1), (7), and 2022 Ky. Acts ch. 210.

(3) Estimate the effect of this administrative regulation on the

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

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

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

(c) How much will it cost to administer this program for the first year? The total costs to implement the changes to the reporting data system as a result of the amendment to this administrative regulation will be \$48,000 for the first year.

(d) How much will it cost to administer this program for subsequent years? Ongoing costs for the reporting data system will be \$18,000 for subsequent years. Staff costs for the Office of Vital Statistics to implement this administrative regulation is \$6,000 yearly.

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 any costs savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any costs savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The costs associated with the amendment to this administrative regulation are state costs only. The regulated facilities providing abortions will not have any costs associated with compliance with this administrative regulation. The total state costs in the first year will be \$48,000 for enhancements to the reporting system.

(d) How much will it cost the regulated entities for subsequent years? Ongoing state costs will be approximately \$24,000 a year for reporting system maintenance and staff 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.

STATEMENT OF EMERGENCY
907 KAR 1:065E

This emergency administrative regulation is being promulgated to incorporate and fully implement a twenty-nine (29) dollar reimbursement increase into current and future nursing facility rates. Specifically, this emergency administrative regulation is being promulgated to institute the twenty-nine (29) dollar reimbursement increase prior to the start of the state fiscal year on July 1, 2022. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)3. to comply with the legislative mandate established in HB 1 from the 2022 Regular Session to include a twenty-nine (29) dollar daily additional payment to address ongoing financial challenges caused by the COVID-19 pandemic. This emergency administrative regulation is also needed pursuant to KRS 13A.190(1)(a)2. to preserve state and federal funding. Failure to implement the twenty-nine (\$29) dollar additional funding payment and comply with a received federal approval could result in a loss of federal funds. Finally, the Department for Medicaid Services (DMS) needs this administrative regulation pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients. Ensuring adequate and appropriate funding for nursing facilities will allow for Medicaid recipients to continue to receive necessary and appropriate services within nursing facilities that serve Medicaid recipients. The Department for Medicaid Services further certifies that this administrative regulation has been brought in a timely matter. An administrative regulation could not go through the administrative regulation promulgation process and be effective prior to July 1, 2022, following the passage of HB 1 in April of 2022. This change is needed prior to the new fiscal year to reflect the change in funding source of the \$29 reimbursement increase. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Emergency Amendment)

907 KAR 1:065E. Payments for price-based nursing facility services.

EFFECTIVE: July 1, 2022

RELATES TO: KRS 142.361, 142.363, 216.380, 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 482.58, 483.10, 42 U.S.C. 1395tt, 1396, 1396a, 1396b, 1396c, 1396d, 1396g, 1396l, 1396n, 1396o, 1396p, 1396r, 1396r-2, 1396r-5

STATUTORY AUTHORITY: KRS 142.361(5), 142.363(3), 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 for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid program for services provided by a price-based nursing facility.

Section 1. Definitions.

(1) "Ancillary service" means a direct service for which a charge is customarily billed separately from the per diem rate including:

- (a) Ancillary services pursuant to 907 KAR 1:023; or
- (b) If ordered by a physician:
 - 1. Laboratory procedures; or
 - 2. X-rays.

(2) "Appraisal" means an evaluation of a price-based nursing facility building, excluding equipment and land, conducted by the

department in accordance with Section 4 of this administrative regulation for the purpose of calculating the depreciated replacement cost of a price-based nursing facility.

(3) "Appraisal base year" means a year in which the department conducts an appraisal of each price-based NF.

(4) "Auxiliary building" means a roofed and walled structure:

- (a) Serviced by electricity, heating, and cooling;
- (b) Independent of an NF;
- (c) Used for administrative or business purposes related to an NF; and

(d) Constructed on the same tract of ground as an NF.

(5) "Capital rate component" means a calculated per diem amount for an NF based on:

- (a) The NF's appraised depreciated replacement cost;
- (b) A value for land;
- (c) A value for equipment;
- (d) A rate of return;
- (e) A risk factor;
- (f) The number of calendar days in the NF's cost report year;
- (g) The number of licensed NF beds in the NF; and
- (h) The NF's bed occupancy percentage.

(6) "Case-mix" means the time-weighted average price-based NF acuity for Medicaid-eligible and dual-eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a price-based nursing facility, and is based on Minimum Data Set (MDS) 3.0 data classified through the RUG III, M3 p1, (version 5.20) thirty-four (34) group model resident classification system or equivalent.

(7) "Core based statistical area" or "CBSA" means the designation of metropolitan and micropolitan population centers based on the national census, as published by the Federal Office of Management and Budget.

(8) "Department" means the Department for Medicaid Services or its designee.

(9) "Equipment" means a depreciable tangible asset, other than land or a building, which is used in the provision of care for a resident by an NF staff person.

(10) "Governmental entity" means a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(11) "Hospital-based NF" means an NF that:

- (a) Is separately identifiable as a distinct part of the hospital; and
- (b) If separated into multiple but distinct parts of a single hospital, is combined under one (1) provider number.

(12) "Land" means a surveyed tract or tracts of ground that share a common boundary:

- (a) As recorded in a county government office;
- (b) Upon which a building licensed as an NF is constructed; and
- (c) Including site preparation and improvements.

(13) "Local unit of government" means a city, county, special purpose district, or other governmental unit in the state.

(14) "NF" or "nursing facility" means:

- (a) A facility:
 - 1. To which the state survey agency has granted an NF license;
 - 2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and
 - 3. To which the department has granted certification for Medicaid participation; or
- (b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280, and 482.58.

(15) "NF building" means a roofed and walled structure serviced by electricity, heating, and cooling and that is also an NF.

(16) "Nursing facility with Medicaid waiver" or "NF-W" means an NF to which the state survey agency has granted a waiver of the nursing staff requirement.

(17) "Provider assessment" means the assessment imposed by KRS 142.361 and 142.363.

(18) "Routine services" means the services covered by the Medicaid program pursuant to 42 C.F.R. 483.10(f)(11)(i).

(19) "Site improvement" means a depreciable asset element, other than an NF building or auxiliary building, on NF land extending

beyond an NF's foundation if used for NF-related purposes.

(20) "Standard price" means a facility-specific reimbursement that includes a case-mix adjusted component, noncase-mix adjusted component including an allowance to offset a provider assessment, noncapital-facility related component, and capital rate component.

(21) "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care.

(22) "Time-weighted" means a method of calculating case-mix by determining the number of days that a minimum data set (MDS) record is active over a calendar quarter rather than captured from a single day during the calendar quarter.

Section 2. NF Reimbursement Classifications and Criteria.

(1) An NF or a hospital-based NF shall be reimbursed as a price-based NF pursuant to this administrative regulation if:

(a) It provides NF services to an individual who:

1. Is a Medicaid recipient;

2. Meets the NF patient status criteria pursuant to 907 KAR 1:022; and

3. Occupies a Medicaid-certified bed; and

(b)1. It has more than ten (10) NF beds and the greater of:

a. Ten (10) of its Medicaid-certified beds participate in the Medicare program; or

b. Twenty (20) percent of its Medicaid certified beds participate in the Medicare program; or

2. It has less than ten (10) NF beds and all of its NF beds participate in the Medicare program.

(2) An NF-W shall be reimbursed as a price-based NF pursuant to this administrative regulation if it meets the criteria established in subsection (1)(a) of this section.

(3) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025:

(a) An NF with a certified brain injury unit;

(b) An NF with a distinct part ventilator unit;

(c) An NF designated as an institution for mental disease;

(d) A dually-licensed pediatric facility; or

(e) An intermediate care facility for individuals with an intellectual disability.

Section 3. Reimbursement for Federally-Defined Swing Beds and for Skilled Nursing Facility Services in Critical Access Hospital Swing Beds.

(1) The reimbursement rate for a federally-defined swing bed shall be:

(a) The average rate per patient day paid to freestanding price-based NFs for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 14 of this administrative regulation; and

(b) Established effective January 1 of each year.

(2)(a) The department shall reimburse a critical access hospital for skilled nursing facility services in a swing bed at the same rate as established by the Centers for Medicare and Medicaid Services for Medicare.

(b) The department shall pay an interim per diem rate as established by CMS for the Medicare program.

(c) The effective date of a rate shall be the same as used by the Medicare program.

(d) A critical access hospital's final reimbursement for skilled nursing facility services in a swing bed shall reflect any adjustment made by the Centers for Medicare and Medicaid Services.

(e) Total payments made to a critical access hospital for skilled nursing facility services provided in a swing bed under this section shall be subject to the payment limitation established in 42 C.F.R. 447.271.

(f) The provisions established in this subsection shall apply to a critical access hospital that complies with all requirements established in KRS 216.380.

Section 4. Price-based NF Appraisal. (1) The department shall appraise a price-based NF to determine the facility specific capital component in 2009, and every fifth year, in order to calculate the

NF's depreciated replacement cost.

(2) The department shall not appraise equipment or land. A provider shall be given the following values for land and equipment:

(a) Ten (10) percent of an NF's average licensed bed value for land; and

(b) \$2,000 per licensed NF bed for equipment.

(3) The department shall utilize the following variables and fields of the nursing home or convalescent center #5200 model of the Marshall & Swift Boeckh Building Valuation System (BVS) to appraise an NF identified in Section 2(1) of this administrative regulation:

(a) Provider number;

(b) Property owner - NF name;

(c) Address;

(d) Zip code;

(e) Section number - the lowest number shall be assigned to the oldest section and a basement, appraised as a separate section, immediately follows the section it is beneath;

(f) Occupancy code - nursing home or substructure;

(g) Average story height;

(h) Construction type;

(i) Number of stories;

(j) Gross floor area (which shall be the determination of the exterior dimensions of all interior areas including stairwells of each floor, specifically excluding outdoor patios, covered walkways, carports, and similar areas). In addition, interior square footage measurements shall be reported for:

1. A non-NF area;

2. A shared service area by type of service; and

3. A revenue-generating area;

(k) Gross perimeter (common walls between sections shall be excluded from both sections);

(l) Construction quality;

(m) Year built;

(n) Building effective age;

(o) Building condition;

(p) Depreciation percent;

(q) Exterior wall material;

(r) Roof covering material and roof pitch;

(s) Heating system;

(t) Cooling system;

(u) Floor finish;

(v) Ceiling finish;

(w) Partition wall structure and finish;

(x) Passenger and freight elevators - actual number;

(y) Fire protection system (sprinklers, manual fire alarms, and automatic fire detection) - percent of gross area served. If both the floor and attic areas are protected by a sprinkler system or automatic detection, the percent of gross area served shall be twice the floor area; and

(z) Miscellaneous additional features, which shall be limited to:

1. Canopies;

2. Entry foyers (sheltered entry ways):

a. The glass and aluminum standard allowance shall be thirty (30) dollars per square foot;

b. Bulkhead standard allowance shall be:

(i) Seven (7) dollars per square foot for a wood frame;

(ii) Eight (8) dollars per square foot for a steel frame; or

(iii) Twenty (20) dollars per square foot for brick masonry;

3. Loading docks;

4. Code alerts, Wanderguards, or other special electronically-secured doorways, except for a door with a sound detector or sensing unit (the standard allowance shall be \$1,500 for each fully-functioning door at the time of appraisal);

5. A door with a sound detector or sensing unit shall have a standard allowance of \$500 per door;

6. Automatic sliding doors (the standard allowance shall be \$17,000 per doorway);

7. An automatic door opener shall have a standard allowance of \$6,500 per door;

8. Detached garages or storage sheds (which shall have an attached reinforced concrete floor and a minimum of 200 square feet);

9. Modular buildings or trailers, if the structure has a minimum of 200 square feet, electrical service, and heating or cooling services (the standard allowance shall be fifty-six (56) dollars per square foot);

10. Walk-in coolers or freezers;

11. Laundry chutes (the standard allowance shall be \$2,100 per floor serviced);

12. Dumb waiters (which shall have a minimum speed of fifty (50) feet per minute. The standard allowance shall be \$8,000 for the initial two (2) stops for a manual door or \$21,000 for the initial two (2) stops for an electric door and \$7,000 per additional stop);

13. Skylights (the standard allowance shall be forty (40) dollars per square foot);

14. Operable built-in oxygen delivery systems (valued at \$300 per serviced bed);

15. Carpeted wainscoting (the standard allowance shall be sixty (60) dollars per licensed bed);

16. Balconies;

17. Ceiling fans for which the standard allowance shall be \$250 for each ceiling fan without a light and \$400 for each ceiling fan with a light;

18. Cupolas for which the standard allowance shall be \$720 each;

19. Fireplaces;

20. Concrete-lined utility tunnels for which the standard allowance shall be twenty-five (25) dollars per cubic foot; and

21. Mechanical penthouses.

(4) An item listed in subsection (3)(z) of this section shall be subject to the Marshall & Swift Boeckh BVS model #5200 monetary limit unless a monetary limit is provided for that item in subsection (3)(z) of this section.

(5) The department shall use the corresponding Marshall & Swift Boeckh BVS default value for any variable listed in subsection (3) of this section if no other value is stated for that variable in subsection (3) of this section.

(6)(a) Values from the most recent Marshall & Swift Boeckh BVS tables shall be used during an appraisal.

(b) An adjustment calculation shall be performed if the most recent Marshall & Swift Boeckh BVS tables do not correspond to an appraisal base year.

(7) In addition to an appraisal cited in subsection (1) of this section, the department shall appraise an NF identified in Section 2(1) of this administrative regulation if:

(a) The NF submits written proof of construction costs to the department; and

(b)1. The NF undergoes renovations or additions costing a minimum of \$150,000 and the NF has more than sixty (60) licensed beds; or

2. The NF undergoes renovations or additions costing a minimum of \$75,000 and the NF has sixty (60) or fewer licensed beds.

(8) An auxiliary building shall be:

(a) Appraised if it rests on land, as defined in Section 1(12) of this administrative regulation; and

(b) Appraised separately from an NF building.

(9) To appraise an auxiliary building, the department shall utilize a Marshall & Swift Boeckh BVS model other than the nursing home or convalescent center #5200 model, if the model better fits the auxiliary building's use and type.

(10) If an NF building has beds licensed for non-NF purposes or a provider conducts business activities not related to the NF, the appraisal shall be adjusted between NF and non-NF activity. The appraiser shall determine if the adjustment shall be made by dividing the number of licensed NF beds by the total number of beds, or through the use of an adjustment factor determined in accordance with appraisal industry standards by the appraiser, regardless of the occupancy factor. For example, an adjustment factor may be used to apportion the appraisal by the percent of NF square footage relative to the square footage on non-NF-related business activities.

(11) Cost of an appraisal shall be the responsibility of the NF being appraised.

(12) A building held for investment, future expansion, or speculation shall not be considered for appraisal purposes.

(13) The department shall not consider the following location factors in rendering an appraisal:

(a) Climate;

(b) High-wind zone;

(c) Degree of slope;

(d) Position;

(e) Accessibility; or

(f) Soil condition.

Section 5. Standard Price Overview.

(1) Rates shall reflect the differential in wages, property values, and cost of doing business in rural and urban designated areas.

(2)(a) Except as provided by paragraph (b) of this subsection, and beginning in 2018, on July 1 of each year, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas always being classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.

(b)1. On July 7, 2017, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.

2. On July 7, 2017, a change in designation from:

a. Rural to urban shall take effect on July 1, 2017; and

b. Urban to rural shall take effect July 1, 2018.

(3) The department shall utilize an analysis of fair-market pricing and historical cost for the following data:

(a) Staffing ratios;

(b) Wage rates;

(c) Cost of administration, food, professional support, consultation, and nonpersonnel operating expenses as a percentage of total cost;

(d) Fringe benefit levels;

(e) Capital rate component; and

(f) Noncapital facility-related component.

(4) The following components shall comprise the case-mix adjustable portion of an NF's standard price:

(a) The personnel cost of:

1. A director of nursing;

2. A registered nurse (RN);

3. A licensed practical nurse (LPN);

4. A nurse aide;

5. An activities staff person; and

6. A medical records staff person; and

(b) Nonpersonnel operating cost including:

1. Medical supplies; and

2. Activity supplies.

(5) The following components shall comprise the noncase-mix adjustable portion of an NF's standard price:

(a) Administration to include an allowance to offset a provider assessment;

(b) Nondirect care personnel;

(c) Food;

(d) Professional support; and

(e) Consultation.

(6) The following components shall comprise the facility and capital component of an NF's standard price:

(a) The noncapital facility-related component, which shall be a fixed, uniform amount for all price-based NFs; and

(b) The NF's capital rate component, which shall be facility specific.

(7) Excluding capital rate components, the following is an example of an urban and a rural price-based NF's standard price based on rebased wages at the 2008 level:

CBSA Designation	Case-Mix Adjustable Portion of Standard Price	Noncase-Mix Adjustable Portion of Standard Price Without Capital Rate Component	Total Standard Price Excluding Capital Rate Components
Urban	\$88.05	\$62.80	\$150.85

Rural	\$74.62	\$55.63	\$130.25
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(8) A price-based NF's standard price shall be adjusted for inflation every July 1 and rebased in 2008.

(9) Effective July 1, 2004, an NF shall not receive a rate less than its standard price.

(10) Effective July 1, 2022:

(a) A nursing home relief reimbursement increase of twenty-nine (29) dollars shall be included in the noncase-mix adjustable portion of the per diem rate.

(b) The nursing home relief reimbursement increase shall be included in the administration line of the calculation and shall not receive annual inflationary adjustments.

(c) The nursing home relief reimbursement increase of twenty-nine (29) dollars shall continue until the standard price is rebased.

(11) The department shall adjust an NF's standard price if:

(a) A governmental entity imposes a mandatory minimum wage or staffing ratio increase and the increase was not included in the inflation adjustment; or

(b) A new licensure requirement or new interpretation of an existing requirement by the state survey agency results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of a licensure requirement or policy interpretation.

Section 6. Standard Price Calculation. (1) Based on the classification of urban or rural, the department shall calculate an individual NF's standard price to be the sum of:

(a) The case-mix adjustable portion of the NF's standard price, adjusted by the NF's current case-mix pursuant to Section 7 of this administrative regulation;

(b) The noncase-mix adjustable portion of the NF's standard price, which shall include:

1. An allowance to offset a provider assessment; and

2. The nursing home relief reimbursement increase of twenty-nine (29) dollars;

(c) The noncapital facility-related component; and

(d) Pursuant to subsection (2) of this section, the capital rate component.

(2) An NF's capital rate component shall be calculated as follows:

(a) The department shall add the total of:

1. The NF's average licensed bed value, which shall:

a. Be determined by dividing the NF's depreciated replacement cost, as determined from an appraisal conducted in accordance with Section 4 of this administrative regulation, by the NF's total licensed NF beds; and

b. Not exceed \$56,003 effective July 1, 2016, which shall be adjusted every July 1 thereafter by the same factor applied to the NF's depreciated replacement cost;

2. A value for land, which shall be ten (10) percent of the NF's average licensed NF bed value, established in accordance with subparagraph 1. of this paragraph; and

3. A value for equipment, which shall be \$2,000 per licensed NF bed;

(b) The department shall multiply the sum of paragraph (a) of this subsection by a rate of return factor, which shall:

1. Be equal to the sum of:

a. The yield on a twenty (20) year treasury bond as of the first business day on or after May 31 of the most recent year; and

b. A risk factor of two (2) percent; and

2. Not be less than nine (9) percent nor exceed twelve (12) percent;

(c) The department shall determine the NF's capital cost-per-bed day by:

1. Dividing the NF's total patient days by the NF's available bed days to determine the NF's occupancy percentage;

2. If the NF's occupancy percentage is less than ninety (90) percent, multiplying ninety (90) percent by 365 days; and

3. If the NF's occupancy percentage exceeds ninety (90) percent, multiplying the NF's occupancy percentage by 365 days; and

(d) The department shall divide the sum of paragraphs (a) and

(b) of this subsection by the NF's capital cost-per-bed day

established in paragraph (c) of this subsection to determine an NF's capital rate component.

(3) If a change of ownership occurs pursuant to 42 C.F.R. 447.253(d), the new owner shall:

(a) Receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to Section 4(7) of this administrative regulation; and

(b) File an updated provider application with the Medicaid program pursuant to 907 KAR 1:672, Section 3(4).

(4) A new facility shall be:

(a) Classified as a new facility if the facility does not have a July 1, of the current state fiscal year, Medicaid rate;

(b) Determined to be urban or rural; and

(c) Reimbursed at its standard price, which shall:

1. Be based on a case-mix of 1.0;

2. Be adjusted prospectively based upon no less than one (1) complete calendar quarter of available MDS 3.0 data following the facility's Medicaid certification;

3. Utilize \$56,003 effective July 1, 2016, as adjusted through the current state fiscal year as the facility's average licensed NF bed value until the facility is appraised in accordance with Section 4 of this administrative regulation; and

4. Be adjusted, if necessary, following the facility's appraisal if the appraisal determines the facility's average licensed NF bed value to be less than \$56,003 effective July 1, 2016, as adjusted through the current state fiscal year.

(5) The amounts calculated pursuant to subsection (4)(c)3. and 4. of this section shall be adjusted annually consistent with the adjustments made to the depreciated replacement cost, as described in subsection (2)(a)1.b. of this section for the capital component calculation.

Section 7. Minimum Data Set (MDS) 3.0, Resource Utilization Group (RUG) III, and Validation.

(1) A price-based NF's Medicaid MDS data shall be utilized to determine its case-mix index each quarter.

(2) A price-based NF's case-mix index shall be applied to its case-mix adjustable portion of its standard price.

(3) To determine a price-based NF's case-mix index, the department shall:

(a) Calculate case-mix on a time-weighted basis using MDS data:

1. Extracted on the last date of each calendar quarter from the NF's MDS item sets:

a. Included in Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening; and

b. Transmitted by the NF to the Centers for Medicare and Medicaid Services; and

2. Which, if revised, shall be revised no later than the last date of the quarter following the date on which MDS data was extracted. For example, MDS data submitted after September 30, 2016, for the purpose of revision to MDS data extracted June 30, 2016, shall not be utilized;

(b) Classify the data cited in paragraph (a) of this subsection through the RUG III, (M3 p1), version five point twenty (5.20) thirty-four (34) group or equivalent model resident classification system; and

(c) Validate the data cited in paragraph (a) of this subsection as follows:

1. The department shall generate a stratified random sample of twenty-five (25) percent of the Medicaid residents in a price-based NF;

2. The department shall review one (1) MDS assessment from each resident in the sample referenced in subparagraph 1. of this paragraph;

3. The department shall review medical records corresponding to the individuals included in the sample identified in subparagraphs 1. and 2. of this paragraph to determine if the medical records accurately support the MDS assessments submitted for the sample residents; and

4. If a review of records cited in subparagraph 3. of this paragraph reveals that the price-based NF fails to meet the minimum accuracy threshold, the department shall determine if the NF fails to

meet the minimum accuracy threshold by reviewing 100 percent of the price-based NF's Medicaid MDS assessments:

a. Extracted in accordance with paragraph (a) of this subsection; and

b. Selecting one (1) MDS assessment per resident.

(4) If the department's review, in accordance with subsection (3)(c)3. and 4. of this section, of a price-based NF's MDS assessment data reveals that the NF fails to meet the MDS data minimum accuracy threshold, the department shall conduct another review of the same data utilizing an individual or individuals not involved in the initial validation process if the price-based NF requests a reconsideration within ten (10) business days of being notified of the findings of the review cited in subsection (3)(c)4. of this section.

(5) Only MDS data extracted in accordance with subsection (3)(a)2. of this section shall be allowed during a review or reconsideration.

(6) If a reconsideration of a price-based NF's MDS assessment data, in accordance with subsection (4) of this section, confirms that the NF fails to meet the minimum accuracy threshold, the department shall:

(a) Conduct a conference with the NF to review preliminary findings of the reconsideration; and

(b) Send the final results of the reconsideration to the NF within ten (10) business days of the conference.

(7) In performing validation reviews on MDS data, the department shall:

(a) Notify the NF at the time of the MDS assessment review of any assessment that is not validated and allow the NF to provide supporting documentation that had been utilized to support the assessment;

(b) Consider all MDS supporting documentation provided by the NF prior to the exit conference; and

(c) Not consider MDS supporting documentation provided by the NF after the exit conference has occurred.

(8)(a) Reconsideration of a price-based NF's MDS assessment data validation shall be provided if the NF:

1. Requests a reconsideration and clearly identifies each specific resident's review and MDS elements that are being disputed;

2. States the basis on which the department's decision on each issue is believed to be erroneous; and

3. Provides a summary supporting the NF's position.

(b) After a reconsideration of a price-based NF's MDS assessment data has been completed, the NF may appeal the department decision regarding the data in accordance with 907 KAR 1:671, Section 9.

(9)(a) The department shall refer any suspected intentional alteration of clinical documentation or creation of documentation after an MDS assessment has been transmitted to the Office of Inspector General (OIG) for investigation of possible fraud.

(b) A fraud investigation may result in a felony or misdemeanor criminal conviction.

(10) An NF's rate shall be effective beginning on the first date of the second quarter following the MDS extraction date.

(11) An MDS validation review, if conducted, shall be initiated in the month containing the corresponding rate effective date.

(12) A rate sanction shall be applied on the rate effective date following the validation review initiation date.

(13) MDS assessment accuracy thresholds and corresponding rate sanctions shall be established in accordance with this subsection.

(a) If a price-based NF's percentage of accurate MDS assessments is between sixty-five (65) and seventy-nine (79) percent, the price-based NF's rate shall be sanctioned by fifty (50) cents per patient day.

(b) If a price-based NF's percentage of accurate MDS assessments is between forty (40) and sixty-four (64) percent, the price-based NF's rate shall be sanctioned by sixty (60) cents per patient day.

(c) If a price-based NF's percentage of accurate MDS assessments is below forty (40) percent, the price-based NF's rate shall be sanctioned by seventy (70) cents per patient day.

Section 8. Limitation on Charges to Residents. (1) Except for applicable deductible and coinsurance amounts, an NF that receives reimbursement for a resident pursuant to Section 6 of this administrative regulation shall not charge a resident or his representative for the cost of routine or ancillary services.

(2) An NF may charge a resident or his representative for an item pursuant to 42 C.F.R. 483.10(f)(11)(ii) if:

(a) The item is requested by the resident;

(b) The NF informs the resident in writing that there will be a charge; and

(c) Medicare, Medicaid, or another third party does not pay for the item.

(3) An NF shall:

(a) Not require a resident, or responsible representative of the resident, to request any item or services as a condition of admission or continued stay; and

(b) Inform a resident, or responsible representative of the resident, requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

(4) Reserved bed days, per resident, for an NF or an NF-W shall be:

(a) Reimbursed for a maximum of fourteen (14) days per calendar year due to hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to relocation;

(b) Reimbursed for a maximum of ten (10) days during a calendar year for leaves of absence other than hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to the relocation;

(c) Reimbursed at seventy-five (75) percent of a facility's rate if the facility's occupancy percent is ninety-five (95) percent or greater for the calendar quarter preceding the bed reserve day; and

(d) Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percent is less than ninety-five (95) percent for the calendar quarter preceding the bed reserve day.

(5) Except for oxygen therapy, durable medical equipment (DME) and supplies shall:

(a) Be furnished by an NF; and

(b) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:479, Section 6(3).

(6) Dentures, lenses, frames, or hearing aids shall be paid for through the resident's patient liability or spend down amounts and limited to one (1) replacement per item per calendar year.

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

Section 10. Price-Based NF Protection Period and Budget Constraints. (1) A county-owned hospital-based nursing facility shall not receive a rate that is less than the rate that was in effect on June 30, 2002.

(2) For each year of the biennium, a price-based NF shall:

(a) Receive an adjustment pursuant to Section 5(8) and ~~(11)~~~~(10)~~ of this administrative regulation; or

(b) Except for a county-owned hospital-based nursing facility pursuant to subsection (1) of this section, not receive an increase if the price-based NF's rate is greater than its standard price.

Section 11. Cost Report. (1) A Medicare cost report and the Supplemental Medicaid Schedules shall be submitted pursuant to time frames established in the CMS Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-2) Sections 102, 102.1,

102.3, and 104, using the Instructions for Completing the Medicaid Supplemental Schedules.

(2) A copy of a price-based NF's Medicare cost report shall be submitted for the most recent fiscal year end.

Section 12. Ancillary Services. (1) Except for oxygen therapy and for ancillary services provided to an individual in a critical access hospital swing bed, the department shall reimburse for an ancillary service that meets the criteria established in 907 KAR 1:023 utilizing the corresponding outpatient procedure code rate listed in the Medicaid Physician Fee Schedule established in 907 KAR 3:010, Section 3.

(2) The department shall reimburse for an oxygen therapy utilizing the Medicaid DME Program fee schedule established in 907 KAR 1:479.

(3) Respiratory therapy and respiratory therapy supplies shall be a routine service.

(4) Reimbursement for ancillary services provided to an individual in a critical access hospital swing bed shall be included in the critical access hospital swing bed reimbursement established in Section 3(2) of this administrative regulation.

Section 13. Appeal Rights. A price-based NF may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 14. Supplemental Payments to Nonstate Government-Owned or Operated Nursing Facilities. (1) Beginning July 1, 2001, subject to state funding made available for this provision by a transfer of funds from a governmental entity, the department shall make a supplemental payment to a qualified nursing facility.

(2) To qualify for a supplemental payment under this section, a nursing facility shall:

(a) Be owned or operated by a local unit of government pursuant to 42 C.F.R. 447.272(a)(2);

(b) Have at least 140 or more Medicaid-certified beds; and

(c) Have a Medicaid occupancy rate at or above seventy-five (75) percent.

(3) For each state fiscal year, the department shall calculate the maximum supplemental payment that it may make to qualifying nursing facilities in accordance with 42 C.F.R. 447.272.

(4) Using the data reported by a nursing facility on a Schedule NF-7 submitted to the department as of December 31, 2000, the department shall identify each nursing facility that meets the criteria established in subsection (2) of this section.

(5) The department shall determine a supplemental payment factor for a qualifying nursing facility by dividing the qualifying nursing facility's total Medicaid days by the total Medicaid days for all qualifying nursing facilities.

(6) The department shall determine a supplemental payment for a qualifying nursing facility by applying the supplemental payment factor established in subsection (5) of this section to the total amount available for funding under this section.

(7) Total payments made under this section shall not exceed the amount determined in subsection (3) of this section.

(8) Payments made under this section shall:

(a) Apply to services provided on or after April 1, 2001; and

(b) Be made on a quarterly basis.

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

(a) "Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-2), Sections 102, 102.1, 102.3, and 104", October 2007;

(b) The "Instructions for Completing the Medicaid Supplemental Schedules", April 2015;

(c) The "Supplemental Medicaid Schedules", April 2015; and

(d) "Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening", 10/1/2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the:

(a) Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; and

(b) Following location on the department's Web site: <https://chfs.ky.gov/agencies/dms/dafm/Pages/default.aspx>.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 29, 2022

FILED WITH LRC: July 1, 2022 at 8:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 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 August 15, 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 August 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 and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation revises reimbursement for nursing facilities participating in Kentucky Department for Medicaid Services for all non-managed care recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish price-based nursing facility reimbursement provisions.

(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 price-based nursing facility reimbursement provisions.

(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 updated reimbursement rates for nursing facilities providing care to Kentucky Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates the \$29 pandemic related reimbursement increase into this administrative regulation. The regulation is also amended to ensure that the \$29 reimbursement increase will be included in nursing facility base rates in the future.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect the permanent addition of a reimbursement increase that has been made in multiple state budgets and to clarify how this additional funding will be reflected in future nursing facility rates.

(c) How the amendment conforms to the content of the

authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying how a recent increase in funding will be incorporated into future nursing home rates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by incorporating needed information about total nursing home facility rates into one administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 290 nursing facilities participating with Medicaid that may 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: Nursing facilities will not have to take any actions 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): There will be no cost to the entities to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will receive a higher reimbursement from Medicaid, and the current reimbursement increase is now scheduled to be incorporated into the base rate for nursing facilities in the future.

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

(a) Initially: DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in HB 1 from the 2022 Regular Session.

(b) On a continuing basis: DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in HB 1 from the 2022 Regular Session.

(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: DMS anticipates that current funding levels will not need to increase due to the \$29 reimbursement increase as this funding has been appropriated in multiple previous state budgets.

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

(9) TIERING: Is tiering applied? Tiering was not applied in this administrative regulation because the administration regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396f(f)(6) and 42 C.F.R. 483.20.

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 483.20 requires a nursing facility to conduct a resident assessment of each resident.

(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 set stricter requirements.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither

stricter nor additional standards nor responsibilities are imposed

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(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 Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the amendment.

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

(c) How much will it cost to administer this program for the first year? DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in HB 1 from the 2022 Regular Session.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in HB 1 from the 2022 Regular Session.

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 does anticipate that this amendment will result in a clear acknowledgement and continuing substantial additional reimbursement for nursing facilities.

STATEMENT OF EMERGENCY
922 KAR 2:160E

This emergency administrative regulation is necessary in order to immediately utilize federal American Rescue Plan Act (ARPA) funding appropriated specifically as child care stabilization funds and child care supplemental discretionary funds by the federal grant end dates of September 30, 2023, and September 30, 2024, respectively. The administration of this funding is subject to the requirements of the Child Care and Development Block Grant Act, through which the Child Care Assistance Program (CCAP) is authorized and operated. This amendment is deemed to be an emergency in accordance with KRS 13A.190(1)(a)1. and 2., as providing child care assistance to eligible low-income households ensures access to safe and healthy child care for children in the commonwealth, increasing funds available to child care providers is beneficial to the welfare of the commonwealth as these businesses are vital to the workforce, and federal funding will be lost if not used during the specified time period. This emergency administrative regulation is dependent on federal funding and is temporary in nature, but ARPA funds have been made available through September 30, 2024, necessitating a timeframe longer than the 270 days permitted by KRS 13A.190(4)(a). For this reason, 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
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Emergency Amendment)

922 KAR 2:160E. Child Care Assistance Program.

EFFECTIVE: July 1, 2022

RELATES TO: KRS 194A.060, 199.894(1), (5), 199.896, 199.898(1), (2), 199.8982, 199.899, 214.036, 314.011(5), 337.275, 600.020, 605.120(5), 620.020(10), 7 C.F.R. Part 1463, 20 C.F.R. Parts 676-678, 34 C.F.R. Part 361, Part 463, 45 C.F.R. Part 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 7 U.S.C. 2012, 25 U.S.C. 1261, 1401, 5501, 29 U.S.C. 723(a)(5), 34 U.S.C. 20102(c), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141, 1771-1793, 2000d, 3001, 4950-5085, 8621, 9857-9858q, 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 9857-9858q, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner that is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that may affect eligibility or benefit amounts, such as:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;
- (h) Beginning or ending an educational activity;
- (i) Change in child care provider;
- (j) Change in address or residence;
- (k) Change in marital status;
- (l) Beginning or ending receipt of unearned income; or
- (m) Enrollment in a certified trade school or an accredited college or university.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child Care and Development Fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined by 922 KAR 1:330, Section 1(5).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home" is defined by KRS 199.894(5).

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Good academic standing" means a student is meeting the trade school, college, or university's requirements for attendance and satisfactory progress towards the completion of coursework.

(15) "Health professional" means a person actively licensed as a:

- (a) Physician;
- (b) Physician assistant;
- (c) Advanced practice registered nurse;
- (d) Qualified mental health professional as defined by KRS 600.020(52); or
- (e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(16) "Homeless" means an individual or a family lacking a fixed, regular, and adequate nighttime residence, including a child experiencing homelessness as defined by 45 C.F.R. 98.2.

(17) "In loco parentis" means a person acting in place of a parent, including:

- (a) A legal guardian;
- (b) An individual related by blood, marriage, or adoption to the child; or
- (c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(18) "Infant" means a child who is less than one (1) year old.

(19) "Kentucky Transitional Assistance Program" or "KTAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(20) "Parent" is defined by 45 C.F.R. 98.2.

(21) "Part day" means child care that is provided for less than

five (5) hours per day.

(22) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(23) "Preventive services" is defined by KRS 620.020(12).

(24) "Provider" means the entity providing child care services, such as:

- (a) A member of a limited liability corporation (LLC);
- (b) The head of an organization;
- (c) An owner of a corporation;
- (d) A member of a partnership;
- (e) An owner of a business;
- (f) An individual provider; or
- (g) A stockholder of a stock-holding company.

(25) "Qualified alien" or "qualified immigrant" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(26) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(27) "Related" means having one (1) of the following relationships:

- (a) Child;
- (b) Stepchild;
- (c) Grandchild;
- (d) Great-grandchild;
- (e) Niece;
- (f) Nephew;
- (g) Sibling;
- (h) Child in legal custody; or
- (i) Child living in loco parentis.

(28) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

- (a) The natural parent, adoptive parent, or stepparent; or
- (b) The spouse of an individual caring for a child in loco parentis.

(29) "School-age child" means a child who has reached the sixth birthday.

(30) "State median income" or "SMI" means the estimated median income of households in the state.

(31) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

- (a) Defined by 7 U.S.C. 2012; and
- (b) Governed by 921 KAR Chapter 3.

(32) "Teen parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(33) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

- a. A signed DCC-90, Subsidized Child Care Assistance Application Summary; or
- b. Submission in accordance with 921 KAR 2:040, Section 1(6);

or

- 2. The agency is contacted, if the person:
 - a. Has a physical or mental disability; and
 - b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures established in 920 KAR 1:070, interpreter services shall be provided for persons who are:

- 1. Deaf; or
- 2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, 7, and 8 of this administrative regulation.

(a) An applicant or recipient shall be the primary source of information and shall:

- 1. Furnish verification of:
 - a. Income;
 - b. Technical eligibility; and
 - c. Employment; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(c) A homeless household shall have a minimum of three (3) months to verify information in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send notice to the applicant in accordance with Section 12(4) of this administrative regulation.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

- (a) Assistance until approval of the application for benefits; or
- (b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

- 1. Resident of Kentucky; and
- 2. U.S. citizen, qualified immigrant, or qualified alien;

(b) Is under age:

- 1. Thirteen (13) at the time of application or recertification; or
- 2. Nineteen (19) at the time of application or recertification and

is:

a. Physically or mentally incapable of caring for themselves, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

- a. Licensed child-care center;
- b. Certified child-care home;
- c. Public school;
- d. Head Start; or
- e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

- (a) A parent or stepparent;
- (b) A legal guardian;
- (c) A member of the KTAP or SNAP case in which the child in

need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child-care center licensure;
2. Certified according to 922 KAR 2:100, Certification of family child-care homes; or
3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;
- (f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care; or
- (g) Another child care provider if the family operates the child care business in the home.
- (4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

- (a) An applicant who has employment an average twenty (20) hours per week;
- (b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;
- (c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;
- (d) A relative or fictive kin caregiver pursuant to 922 KAR 1:565 who meets:
 1. All requirements in this section; and
 2. Income eligibility standards established in Section 8 of this administrative regulation;
- (e) A teen parent attending high school or pursuing a general equivalency degree (GED), including a period of recess or temporary break up to three (3) months; or
- (f) An applicant who meets the eligibility requirements specified in Section 7 of this administrative regulation.
- (2) A child shall be eligible to receive CCAP for a minimum of three (3) months or in accordance with Section 9 of this administrative regulation if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:
 - (a) An applicant who is homeless;
 - (b) An applicant who is engaged in job search;
 - (c) A recipient after the loss of employment, a reduction in the required number of employment hours, or cessation of attendance at a job training or educational program in accordance with 42 U.S.C. 9858c(2)(N)(iii), to allow for job search or resumption of work or attendance at job training or educational program; or
 - (d) A recipient on maternity leave or other medical leave from employment as verified by a health professional, unless a temporary disability as verified by a health professional necessitates longer than three (3) months of CCAP eligibility.

(3) Effective October 24, 2022, to the extent funds are available, a household shall have all earned and unearned income excluded from the eligibility determination if an applicant or responsible adult meets the requirements of subsection (1) of this section and has verified employment in a regulated:

- (a) Licensed child-care center; or
- (b) Certified family child-care home.

(4) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 8(6)(d) of this administrative regulation by an hourly pay rate of no less than minimum wage established in accordance with KRS 337.275.

Section 5. Requirements for Protection and Permanency

Eligibility Determination.

- (1) A child shall be eligible to receive CCAP if the child:
 - (a) Resides with an applicant who:
 1. Receives child protective or preventive services; or
 2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and
 - (b) Meets the requirements listed in Section 3 of this administrative regulation.
 - (2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.
 - (3)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 11 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.
 - (b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.
- Section 6. State-Funded Workforce Training Child Care Eligibility Determination. A child shall be eligible for CCAP if the child:
- (1) Resides with an applicant who is participating in the:
 - (a) Kentucky Works Program established in 921 KAR 2:370; or
 - (b) Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) pursuant to 921 KAR 3:042; and
 - (2) Meets the requirements listed in Section 3 of this administrative regulation.

Section 7. Education and Job Training Child Care Eligibility Determination. (1) To the extent funds are available, a child shall be eligible for CCAP if the child:

- (a) Resides with an applicant who:
 1. Is enrolled in:
 - a.(i) A certified trade school or an accredited college or university; or
 - (ii) ~~[A full-time program that leads to a general educational development (GED); or~~
 - (iii) A program that leads to a degree or certification; and
 - b. Accordance with subsection (2) of this section;
2. Is in good academic standing with the trade school, college, or university in which the applicant is enrolled;
3. Provides verification of enrollment and good academic standing from the trade school, college, or university in which the applicant is enrolled;
4. Meets income eligibility criteria of Section 8 of this administrative regulation; and
5. Has not received CCAP for more than sixty (60) months due to enrollment in a certified trade school or an accredited college or university; and
- (b) Meets the requirements established in Section 3 of this administrative regulation.
- (2) While an applicant is enrolled in a certified trade school or an accredited college or university:
 - (a) The applicant's coursework shall be completed in-person or online; and
 - (b) The applicant shall be classified as a full-time student as defined by the trade school, college, or university.
- (3) An applicant who does not complete a term at a trade school, college, or university shall be responsible for the cost of child care tuition for the term.

Section 8. Income Eligibility. (1) A child shall be eligible for CCAP if the family's income is less than or equal to eighty-five (85) percent of the SMI as prepared by the U.S. Census Bureau through calendar year 2021 at initial application, recertification, or recalculation.

- [(a)1. Through December 31, 2021, 160 percent of the federal poverty guidelines at initial application; and
2. Effective January 1, 2022, 200 percent of the federal poverty guidelines as adjusted annually by the U.S. Department of Health

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and Human Services through calendar year 2021 at initial application; or

(b)1. Through December 31, 2021, 200 percent of the federal poverty guidelines at recertification or recalculation; and

2. Effective January 1, 2022, eighty-five percent (85%) of the SMI as prepared by the U.S. Census Bureau through calendar year 2021 at recertification or recalculation.]

(2) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(3) A child who is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(4) Excluded income shall be:

(a) KTAP child only payments, including back payment;

(b) A payment received from the kinship care program, pursuant to 922 KAR 1:130, including back payment;

(c) Educational grant, loan, scholarship, and work study income;

(d) The value of a:

1. Kentucky Works supportive services payment pursuant to 921 KAR 2:017; or

2. SNAP E&T transportation payment pursuant to 921 KAR 3:042;

(e) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under SNAP;

(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;

(p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5085 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u) The principal of a verified loan;

(v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(w) The advance payment or refund of earned income tax credit;

(x) Payment made from the Agent Orange Settlement Fund;

(y) Payment made from the Radiation Exposure Compensation Trust Fund;

(z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc) A payment received from the National Tobacco Growers Settlement Trust;

(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 34 U.S.C. 20102(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);

(jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act pursuant to 20 C.F.R. Parts 676-678 or 34 C.F.R. Part 361 or 463;

(kk) Waiver reimbursement in accordance with 907 KAR 1:170, 907 KAR 1:835, or 907 KAR 7:015 to a parent for the care of a child in the home; or

(ll) Supplemental Security Income (SSI) for a child.

(5) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self-employment.

(6) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall:

a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and

b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semi-monthly, monthly, quarterly, or annual earnings;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by adding gross income from each pay period, dividing by the total number of pay periods considered, and converting the pay period figure to a monthly figure by multiplying a:

a. Weekly amount by four and one-third (4 1/3);

b. Biweekly amount by two and one-sixth (2 1/6); or

c. Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received a calendar month of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period;

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph; and

c. Rounding to the nearest dollar.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

2. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

3. Profit shall be determined by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing total gross income and total amount of allowable expenses separately by twelve (12) or the appropriate number of months, and rounding the quotients to the nearest dollar; and

d. Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.

(e) If the cabinet or its designee becomes aware of a change in circumstance, the best estimate shall be recalculated.

Section 9. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be recertified at least every twelve (12) months.

(2) Eligibility shall be reviewed at each twelve (12) month recertification for a child who is placed with a relative or fictive kin caregiver. A child who is placed with a relative or fictive kin caregiver shall remain eligible pursuant to Section 5 of this administrative regulation for as long as the cabinet determines that child care is necessary in order to prevent child maltreatment or entry into the foster care system.

(3) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(4) Unless a nonrelative is approved as fictive kin pursuant to 922 KAR 1:140 or 922 KAR 1:565 and Section 5 of this administrative regulation, a nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

(5) In accordance with 42 U.S.C. 9858c(c)(2)(N), if a family's income does not exceed eighty-five (85) percent of Kentucky's SMI, the family shall remain eligible for CCAP until recertification in accordance with this section.

(6)(a) ~~1. Effective March 4, 2022, through August 31, 2022, [to the extent funds are available,] the cabinet shall implement a transitional period in the Child Care Assistance Program. A child enrolled shall continue to receive assistance for three (3) months after becoming ineligible due to exceeding the income limitations established in Section 8 of this administrative regulation.~~

2. Effective September 1, 2022, to the extent funds are available, the cabinet shall implement a transitional period in the Child Care Assistance Program. A child enrolled shall continue to receive assistance for six (6) months after becoming ineligible due to exceeding the income limitations established in Section 8 of this administrative regulation.

(b) During the transitional period established in paragraph (a) of this subsection, the provider shall continue to receive fifty percent (50%) of the lesser amount of the provider subsidized rate or maximum payment rate established in the DCC-300, rounded up to the nearest whole dollar.

Section 10. Payment Rates and Policy. (1)(a) To the extent funds are available, the cabinet shall make payments as listed in the

DCC-300, Kentucky Child Care Maximum Payment Rate Chart.

(b) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(c) The maximum payment rates shall include the following categories:

1. Full day;
2. Part day;
3. Licensed Type I;
4. Licensed Type II;
5. Certified;
6. Registered;
7. Infant/Toddler;
8. Preschool child; and
9. School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day through July 31, 2022, and effective August 1, 2022, five (5) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education of Young Children;
2. National Early Childhood Program Accreditation;
3. National Association for Family Child Care;
4. Council on Accreditation; or
5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day through July 31, 2022, and effective August 1, 2022, ten (10) dollars per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or
2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day through July 31, 2022, and effective August 1, 2022, five (5) additional dollars per day beyond the maximum rate for care of a child:

- (a) With a special need; or
- (b) Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:
 1. Physically or mentally incapable of caring for himself as determined by a health professional; or
 2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

- (a) Three (3) children receiving CCAP per day; or
- (b) Six (6) children receiving CCAP per day, if those children are:
 1. A part of a sibling group; and
 2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 11. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(3) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

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Family Co-Payment Per Day		Family Size 2 Family Co-Pay With 1 Child			Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
Income Range Monthly			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
900	999	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,000	1,099	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,100	1,199	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,200	1,299	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,300	1,399	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1,400	1,499	\$6	\$5	\$6	\$5	\$6	\$4	\$4	\$4	\$4
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$5	\$5	\$5	\$5
1,600	1,699	\$8	\$6	\$7	\$6	\$7	\$6	\$6	\$6	\$6
1,700	1,799	\$9	\$7	\$8	\$7	\$8	\$6	\$6	\$7	\$7
1,800	1,899	\$10	\$8	\$9	\$7	\$8	\$7	\$7	\$8	\$8
1,900	1,999	\$10	\$9	\$10	\$8	\$9	\$8	\$8	\$9	\$9
2,000	2,099	\$11	\$10	\$11	\$8	\$9	\$8	\$8	\$9	\$9
2,100	2,199.99	\$12	\$10	\$11	\$9	\$10	\$9	\$9	\$10	\$10
2,200	2,299.99	\$12	\$11	\$12	\$10	\$11	\$9	\$9	\$10	\$10
2,300	2,399.99	\$12	\$12	\$13	\$11	\$12	\$9	\$9	\$10	\$10
2,400	2,499.99	\$12	\$12	\$13	\$12	\$13	\$10	\$10	\$11	\$11
2,500	2,599.99	\$12	\$13	\$14	\$12	\$13	\$10	\$10	\$11	\$11
2,600	2,699.99	\$12	\$13	\$14	\$13	\$14	\$12	\$12	\$13	\$13
2,700	2,799.99	\$12	\$13	\$14	\$13	\$14	\$13	\$13	\$14	\$14
2,800	2,899.99	\$12	\$13	\$14	\$14	\$15	\$14	\$14	\$15	\$15
2,900	2,999.99	\$12	\$13	\$14	\$14	\$15	\$16	\$16	\$17	\$17
3,000	3,099.99	\$12	\$13	\$14	\$15	\$16	\$18	\$18	\$19	\$19
3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$20	\$21	\$21
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$20	\$21	\$21
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$22	\$23	\$23
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$22	\$23	\$23
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$24	\$25	\$25
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25	\$25	\$25

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(c) In accordance with 45 C.F.R. 98.21, a copayment for an eligible family shall:

1. Be determined at initial application or recertification; and
2. Not increase during the twelve (12) month eligibility period.

Section 12. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a DCC-94, Child Care Service Agreement and Certificate.

(3) Upon enrollment or reenrollment with a provider, an applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the:

- (a) DCC-94; or
- (b) DCC-90.

(4) Notification of action. (a) A DCC-94C, Provider Notification Letter, shall provide notice to a provider of a child's discontinuation from CCAP or disenrollment with a provider.

(b) A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

1. A change in the certification period of child;
2. Approval of an application; or
3. Continued eligibility.

(c) A DCC-105, Child Care Denial/Discontinuance Notice, shall provide notice of:

1. Denial of an application;

2. Discontinuance of a CCAP benefit;

3. Reason for adverse action;

4. Citation from an applicable state administrative regulation; and

5. Information regarding the opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(d) The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection.

(5) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(6) Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(7) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

- (a) Discontinued from CCAP benefits; and
- (b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(8) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 14(1)(c) of this administrative regulation.

Section 13. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer

information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 2:090, Child-care center licensure;

(c) 922 KAR 2:100, Certification of family child-care homes;

(d) 922 KAR 2:120, Child-care center health and safety standards;

(e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) 922 KAR 2:190, Civil penalties;

(g) 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes; and

(h) 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals.

(4) The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180.

(5) If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(6) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(7) The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

(8) In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) A child experiencing homelessness as defined by 45 C.F.R. 98.2;

(d) A child in the custody of the cabinet;

(e) KTAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(f) Teen parents attending high school or pursuing a general equivalency degree (GED);

(g) A KTAP recipient attempting to transition off assistance through employment;

(h) A parent whose KTAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(i) A low income working parent; or

(j) A parent in education or training programs leading to self-sufficiency.

Section 14. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the provider and prior to receiving payment from the CCAP, the DCC-94;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c) 1. Maintain the DCC-94E, Child Care Daily Attendance Record, or a cabinet approved electronic billing system in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed or electronically recorded legibly with first and last name by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E or electronic daily attendance record upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:020, Child Care Assistance Program (CCAP)

improper payments, claims, and penalties;

2. 922 KAR 2:090, Child-care center licensure;

3. 922 KAR 2:100, Certification of family child-care homes;

4. 922 KAR 2:120, Child-care center health and safety standards;

5. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

6. 922 KAR 2:190, Civil penalties;

7. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes; and

8. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals;

(e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP; and

(f) Complete, retain on file, and provide to the CCAP billing section a certificate of completion for cabinet approved training on billing once during each year of operation or upon change of the staff member submitting billing information.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;

2. The work hours for each employee of each shift;

3. The management for each shift;

4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

1. The operating plan meets all requirements of:

a. For a licensed child-care center, 922 KAR 2:090 and 922 KAR 2:120; or

b. For a certified family child-care home, 922 KAR 2:100; and

2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

(5) A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

(a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;

(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or

(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in the new provider's operations in any capacity.

Section 15. Other Services. To the extent funds are available, a child whose family's income is over the income limits for the CCAP described in Section 8 of this administrative regulation may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

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(6) Other items relating to child care services with prior approval of the cabinet.

Section 16. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 2:020.

Section 17. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;

2. An illness of the:

a. Child; or

b. Applicant; or

3. A disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 11 of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

a. Entry into the provider's premises during operating hours; or

b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 14(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 14(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 13(8) of this administrative regulation.

Section 18. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 921 KAR 2:055.

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

(a) 922 KAR 2:260; or

(b) 922 KAR 2:020.

Section 19. Records. Records of CCAP shall be maintained and disclosed in accordance with:

(1) KRS 194A.060;

(2) 45 C.F.R. 98.90(e); and

(3) 45 C.F.R. 205.50(a)(1)(i).

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Subsidized Child Care Assistance Application Summary", 7/2019;

(b) "DCC-94, Child Care Service Agreement and Certificate", 07/21;

(c) "DCC-94.1, CHILD CARE Approval/Change Notice", 10/17;

(d) "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;

(e) "DCC-94C, Provider Notification Letter", 10/17;

(f) "DCC-94E, Child Care Daily Attendance Record", 07/22[7/13];

(g) "DCC-97, Provider Billing Form", 04/13;

(h) "DCC-105, Child Care Denial/Discontinuance Notice", 10/17; and

(i) "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 12/21.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 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: June 21, 2022

FILED WITH LRC: July 1, 2022 at 8:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 22, 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 August 15, 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 August 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 enables the cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation will assist in the administration of the CCAP in a manner that is consistent with federal and state requirements, including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

(2) If 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 the administrative regulation incorporates funds received from the American Rescue Plan Act (ARPA) and funds appropriated from the General Assembly for the Child Care Assistance Program. ARPA was signed into law on March 11, 2021, and includes multiple funding provisions impacting families and the child care sector.

This amendment increases the income eligibility for families at initial application from 200 percent of the federal poverty guidelines to eighty-five percent (85%) of the SMI as prepared by the U.S. Census Bureau, which formerly was the eligibility level for recertification. This change is expected to increase the number of families eligible at initial application.

Effective August 1, 2022, to the extent funds are available, federal ARPA funds will be used to increase CCAP add-on incentive rates. The special care rate will increase from one (1) to five (5) additional dollars per day beyond the state maximum rate for full day and part day care. The provider accreditation rate will increase from two (2) dollars per day beyond the maximum rate to five (5) dollars per day beyond the maximum rate. The nontraditional hours add-on rate will increase from one (1) additional dollar per day to ten (10) additional dollars per day, incentivizing providers to consider operating during nontraditional hours.

Effective September 1, 2022, the transition period during which a household still receives Child Care Assistance Program assistance after becoming ineligible due to exceeding income guidelines will be extended from three (3) to six (6) months. Federal ARPA funds are being used in this manner to assist families who may be experiencing a benefit cliff effect.

Effective October 24, 2022, to the extent funds are available, the amendment includes that household income will be exempted from the program eligibility determination if an applicant or responsible adult meets the eligibility requirements of Sections 3 and 4 of the administrative regulation and is employed by a regulated licensed child-care center or certified family child-care home. This may further incentivize employment in a child-care center or family child-care home.

The “DCC-94E, Child Care Daily Attendance Record” is being amended to include that an overpayment shall (rather than may) be pursued as an intentional program violation.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to obligate remaining funds from the American Rescue Plan Act for the purpose of supporting child care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations, promoting parents’ efforts to achieve self-sufficiency and the provision of quality child care, enhancing program integrity, and preserving the health and welfare of vulnerable children. This amendment obligates funds received through the American Rescue Plan Act.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its refinement of CCAP in accordance with federal and state laws and the interests of households and children served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 2022, there were 15,096 families and 26,946 children enrolled in CCAP, and over 1,600 child care providers participating in CCAP. This is an increase of approximately 3,000 families and children participating in the program since May 2021.

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

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation will create no new actions for these entities, but more families and children may be eligible for program assistance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Families will benefit from increased income eligibility standards at initial application and the expansion of the CCAP transitional period from three (3) to six (6) months. Providers may experience a funding increase related to specific incentive rates, including for accreditation, special care, and operating in nontraditional hours. Applicants who meet other eligibility requirements and are employed by a licensed child-care center or certified family child-care home will have their income exempted from the eligibility determination in order to further incentivize staffing efforts in the child care sector.

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

(a) Initially: The amendment to this administrative regulation will be implemented within available federal and state appropriations for CCAP.

(b) On a continuing basis: The administrative regulation will be implemented within available federal and state appropriations for CCAP. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services 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 to be used for implementation and enforcement of this administrative regulation are the federal Child Care and Development Fund Block Grant, state match, state maintenance of effort funds, and state General Funds. This amendment is being implemented through the use of federal American Rescue Plan Act (ARPA) funds.

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

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

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented in a like manner statewide. However, provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. The provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.892, 199.8994

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate.

regulation and amendment makes funding available to regulated entities and eligible families and is not anticipated to have a negative or adverse economic impact to regulated entities.

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 this administrative regulation. Any local government or school district operating a child care program that receives CCAP will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994, 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will be implemented with funds from the American Rescue Plan Act and General Fund appropriations.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will be implemented within available federal appropriations through the American Rescue Plan Act and General Fund appropriations. The Child Care Assistance Program is funded through Child Care and Development Fund Block Grant federal funds and state appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 regulated entities, but will result in additional funding available to child care providers and additional assistance available to eligible families and children.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

(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

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. Other statutes or legislation may affect a regulation's actual end date.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Emergency As Amended at ARRS, July 14, 2022)

900 KAR 5:020E. State Health Plan for facilities and services.

EFFECTIVE: July 14, 2022

Prior versions:

Emergency Amendment - [48 Ky.R. 2368](#)

Emergency Amended After Comments - [48 Ky.R. 2715](#)

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The [2020-2022] State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2022 Update to the [2020-2022] State Health Plan", July [April] 2022 [January 2022] [August 2020], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's

Web	site	at:
https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Emergency As Amended at ARRS, July 14, 2022)

900 KAR 6:075E. Certificate of need nonsubstantive review.

EFFECTIVE: July 14, 2022

Prior versions:

Emergency Amendment - [48 Ky.R. 2370](#)

Amended After Comments - [48 Ky.R. 2716](#)

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.062, 216B.090, 216B.095, 216B.115, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1., 216B.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1. requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need

applications that are granted nonsubstantive status. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

(4) "Days" means calendar days, unless otherwise specified.

(5) "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7) "Public notice" means notice given through the cabinet's Certificate of Need Newsletter.

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(3)(f), the Office of Inspector General shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital and was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent certificate of need approval;

2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service that the applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours; [or]

(c)1. The proposal involves an application to establish an

ambulatory surgical center that does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation;

(d) The proposal involves an application to establish an industrial ambulance service;

(e) The proposal involves an application by a licensed health facility to establish a Class I ground ambulance service operating at the Advanced Life Support (ALS) or Basic Life Support (BLS) level to provide [nonemergency] transport of individuals if the applicant agrees to the following restrictions to be placed on its proposed certificate of need and ground ambulance license:

1. The applicant shall only transport individuals who are patients of the licensed health facility or a health facility under common ownership; and

2. The applicant shall only transport individuals to or from its health facility or a health facility under common ownership and another licensed health facility, the individual's place of residence, or other community-based setting; or

(f)(e) The proposal involves an application to transfer acute care beds from one (1) or more existing Kentucky-licensed hospitals to establish a new hospital under the following circumstances:

1. The existing hospital and new facility shall be under common ownership and located in the same county;

2. No more than fifty (50) percent of the existing hospital's acute care beds shall be transferred to the new facility; and

3.a. If the existing hospital is a state university teaching hospital, the existing hospital exceeded, by at least one (1), the minimum number of quality measures required to receive supplemental university directed payments from Kentucky Medicaid for the state fiscal year preceding the date the application was filed; or

b. If the existing hospital is not a state university teaching hospital, the existing hospital's overall rating by the Centers for Medicare and Medicaid Services Hospital Compare was three (3) stars or higher on the [two (2)] most recent annual update/updates to the overall star ratings [for three (3) out of the last four (4) reported quarters] preceding the date the application was filed; or

(g)1. The proposal involves an application from a Program of All-Inclusive Care for the Elderly (PACE) program that:

a. Has an approved agreement with the Centers for Medicare and Medicaid Services (CMS) and the Department for Medicaid Services (DMS); and

b. Ensures that services authorized under the PACE agreement are provided exclusively to its members who reside within the service area. The service area shall be:

(i) Located within the Commonwealth of Kentucky; and

(ii) Approved by both CMS and DMS.

2. Only an approved PACE program operating within the applicant's service area shall qualify as an affected person for the purpose of opposing a PACE program application.

3. A PACE program shall not be required to obtain certificate of need (CON) approval if the program:

a. Coordinates health services only and does not provide health services to its members or others; or

b. Provides only services for which it has already obtained CON approval under KRS Chapter 216B within the approved CON service area [and 3. No more than fifty (50) percent of the existing hospital's acute care beds shall be transferred to the new facility].

(4) A certificate of need approved for an application submitted under subsection (3)(c) of this section shall state the limitations specified under subsection (3)(c)1. and 2. of this section.

(5) If an application is denied nonsubstantive review status by the Office of Inspector General, the application shall automatically be placed in the formal review process.

(6) If an application is granted nonsubstantive review status by the Office of Inspector General, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(7)(a) If an application is granted nonsubstantive review status by the Office of Inspector General, any affected person who believes that the application is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2. of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.

2. If the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.

(d) Nonsubstantive review applications may be consolidated for hearing purposes.

(8) If an application for certificate of need is granted nonsubstantive review status by the Office of Inspector General, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan.

(9) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.

(10) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Inspector General shall approve each application for a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply.

(11) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8) of this section has been rebutted by clear and convincing evidence by an affected party.

(12) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing that is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(14) A decision to approve or disapprove an application that has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted, as required by KRS 216B.095(1). A hearing officer shall prioritize rendering decisions regarding applications granted nonsubstantive review status pursuant to Section 2(3)(e) or (g)(f)(d) of this administrative regulation.

(15) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

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CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
(Emergency As Amended at ARRS, July 14, 2022)

900 KAR 14:010E. Essential personal care visitor programs; visitation guidelines.

EFFECTIVE: July 14, 2022

Prior versions:

New Emergency Administrative Regulation - [48 Ky.R. 2548](#)

As Amended at ARRS - [48 Ky.R. 2556](#)

Amended After Comments - [48 Ky.R. 2952](#)

RELATES TO: KRS 194A.700(4), 216.510(1)

STATUTORY AUTHORITY: **KRS 216.505[2022 Ky. Acts ch. 10, sec. 1]**

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 216.505[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. **This administrative regulation establishes guidelines for implementation of essential personal care visitor programs.**

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 **KRS 216.505(1)(c)[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.]

[(3)][(5)] "Personal care" means assisting a resident with essential everyday activities, which may include grooming, dressing, and eating.

[(4)][(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 **KRS 216.505(1)(c)[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 **KRS 216.505(3)(h)[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.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, July 14, 2022)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4),(7),(8), 164.753(3),(4),(6), 164.7535, 164.769, 164.780, 164.785, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3),(6), 164.7535, 164.769(5),(6)(f), 164.7894(6), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) authorizes the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7894(6) requires the Authority to promulgate administrative regulations as may be needed for the administration of the Kentucky Coal County College Completion Program. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. ~~(In order)~~ To participate in a specified grant, scholarship, or work-study program administered by the Kentucky Higher Education Assistance Authority, the following application forms shall be completed for the appropriate academic year in which an award is sought in accordance with their instructions:

(1) For the KHEAA Grant Program established in 11 KAR 5:130, the Free Application for Federal Student Aid (FAFSA);

(2) For the KHEAA Work-Study Program established in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;

(3) For the Teacher Scholarship Program established in 11 KAR 8:030, the Teacher Scholarship Application;

(4) For the Early Childhood Development Scholarship Program established in 11 KAR 16:010:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Early Childhood Development Scholarship Application;

(5) For the Robert C. Byrd Honors Scholarship Program established in 11 KAR 18:010:

(a) For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and

(b) For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients;

(6) For the Go Higher Grant Program established in 11 KAR 5:200;

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Go Higher Grant Program Application;

(7) For the Coal County Scholarship Program for Pharmacy Students established in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students Application; ~~and~~

(8) For the Kentucky Coal County College Completion Scholarship Program established in 11 KAR 20:020:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Kentucky Coal County College Completion Scholarship Application; ~~and~~

(9) For the Optometry Scholarship Program established in KRS 164.7870, the Optometry Scholarship Application;

(10) For the Dual Credit Scholarship Program established in KRS 164.786, the Dual Credit Scholarship Application; and

(11) For the Work Ready Kentucky Scholarship Program established in KRS 164.787:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Work Ready Kentucky Scholarship Application.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Free Application for Federal Student Aid July 1, 2022[2019] - June 30, 2023[2020]" (FAFSA), October 2021[2018];

(b) The "Free Application for Federal Student Aid July 1, 2021[2018] - June 30, 2022[2019]" (FAFSA), October 2020[2017];

(c) The "KHEAA Work-Study Program Student Application", July 2001;

(d) The "Teacher Scholarship Application", June 2006;

(e) The "Early Childhood Development Scholarship Application", April 2006;

(f) The "Robert C. Byrd Honors Scholarship Program", June 2009;

(g) The "Robert C. Byrd Honors Scholarship Program-GED Recipients", June 2009;

(h) The "Go Higher Grant Program Application", January 2008;

(i) The "Coal County Scholarship Program for Pharmacy Students Application", February 2011; ~~and~~

(j) The "Kentucky Coal County College Completion Scholarship Application", October 2014; ~~and~~

(k) The "Optometry Scholarship Application", January 2022;

(l) The "Dual Credit Scholarship Application", July 2021; and

(m) The "Work Ready Kentucky Scholarship Application", August 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at www.kheaa.com.

CONTACT PERSON: Hon. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, July 14, 2022)

11 KAR 5:145. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.7889(3)

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), 164.7889(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) ~~authorizes~~**requires** the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that ~~establishes~~**increases both** the maximum amount available under the grant programs, and ~~increases~~ the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 4:080 and 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall be ~~\$5,846~~**\$5,576** or less.

Section 2. CAP Grant Award. (1) Except as provided in

subsection (2) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution in an eligible program shall be the lesser of:

(a) \$1,100[1,000] for an applicant enrolled in a two (2) [-]year institution;[- or]

(b) \$1,450 for an applicant enrolled in a four (4) [-]year institution; or

(c) The amount of eligibility the student has remaining within the aggregate KHEAA grant limit.

(2) The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution in an eligible program shall be:

(a) The amount specified in subsection (1)(a) or (b) of this section:

1. Divided by twelve (12); and

2. Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and

(b) Not in excess of the maximum specified in subsection (1)(c) ~~[(b)]~~ of this section.

(3) For any academic year, a student shall not receive more than \$2,200 if enrolled in a two (2) ~~[-]year~~ institution or \$2,900 if enrolled in a four (4) ~~[-]year~~ institution ~~[2,000]~~ for an aggregate CAP grant award.

Section 3.

(1) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(2) A KHEAA grant award shall not be made for a summer academic term.

Section 4.

(1) A KHEAA grant award shall not exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student.

(3) The KHEAA Grant Program Officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his or her need, the excess shall be considered to be an overaward. If an overaward occurs, this amount shall be returned to the authority immediately.

Section 5.

(1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 6. If the educational institution receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant, and:

(1) If the grant has not yet been disbursed for the fall academic term, the reduction shall be made to both the fall and spring disbursements and the educational institution shall notify the student of the reduction;

(2) If the grant for the fall academic term has already been disbursed and the student enrolls for the spring academic term, the reduction shall be made to the spring disbursement and the educational institution shall notify the student of the reduction;

(3) If the grant for the fall academic term has already been disbursed and the student does not enroll for the spring academic term, the educational institution shall notify the student of the fall

overaward and the student shall repay the overaward to the authority; or

(4) If both the fall and spring disbursements have been made, the educational institution shall notify the student of the overaward and the student shall repay the overaward to the authority.

Section 7.

(1) Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant.

(2) Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

CONTACT PERSON: Hon. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (As Amended at ARRS, July 14, 2022)

11 KAR 15:090. Kentucky Educational Excellence Scholarship (KEES) program.

RELATES TO: KRS 154A.130(4), 156.010, 158.007(8), 164.002(1), (2), 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889, 42 U.S.C. 1751, et seq.

STATUTORY AUTHORITY: KRS 164.7874(3), (16), 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the Kentucky Higher Education Assistance Authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund. KRS 164.7874(16) requires the authority to promulgate administrative regulations establishing the KEES curriculum's courses of study. KRS 164.7879(3)(e) requires the authority to promulgate administrative regulations to determine the eligibility of a noncertified, nonpublic high school graduate and of a GED recipient for a supplemental award. KRS 164.7874(3) requires the authority to establish score equivalents between the SAT and ACT. ~~[KRS 164.7881(6) requires the authority to promulgate administrative regulations establishing a five (5) year postsecondary education program standard.]~~ KRS 164.7881(4)(a) requires the authority to establish overall award levels for the program. KRS 164.7879(2)(c) requires the authority to promulgate administrative regulations determining eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the authority to promulgate administrative regulations identifying equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term":

(a) Means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution; and

(b) Does not mean summer sessions.

(2) "Accredited out-of-state high school" means a high school that is:

(a) Located in a state other than Kentucky or in another country; and

(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.

(3) "ACT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" or "AP" is defined by KRS 164.002(1).

(5) "Cambridge Advanced International" or "CAI" is defined by KRS 164.002(2).

(6) "Course" means the equivalent of one (1) credit as determined by the Kentucky Department of Education (KDE) in 704 KAR 3:305.

(7) "Department of Defense school" means a school operated by the U.S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.

(8) "Dual credit" is defined by KRS 158.007(8).

(9) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that the student is attending.

(10) "Free and reduced price lunch" means the National School Lunch program established by the United States Department of Agriculture, Richard B. Russell National School Lunch Act, 42 U.S.C. 1751, et. seq., to provide subsidized meals to lower income students.

(11) "GED" means a general educational development diploma awarded to a student.

(12) "International Baccalaureate" or "IB" is defined by KRS 164.002(7).

(13) "SAT" means the test:

(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and

(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting. (1) An eligible high school student's grade point average for an academic year shall be calculated using each letter grade awarded for all courses taken during an academic year. The grading scale cutoff scores used to determine the letter grade for each course shall be the same as those used to determine the letter grade for each course reported on the student's official high school transcript.

(2)(a) Except as established in paragraphs (b) and (c) of this subsection, an eligible high school student's grade point average shall be calculated by:

1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A", 3.0 is a "B", 2.0 is a "C", 1.0 is a "D", and 0.0 is an "F";

2. Adding the total number of points accumulated for an academic year; and

3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.

(b) For an eligible high school student taking an AP, IB, or CAI course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F".

(c) Beginning with the academic year 2015-2016, for an eligible high school student taking a dual credit course during the academic year, the course grade assigned by the college shall be used by the high school in calculating the KEES grade point average, and shall be included in the KEES calculation using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F". This weighted scale shall not be applicable to a remedial course.

(3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.

(4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service.

(1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the

custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1.a. and b. and shall submit the Home of Record Certification form to the authority.

(b) The authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for requesting:

1. Grade and curriculum information from the local school; and

2. That the local school submit the information to the authority using the Curriculum Certification form and the Data Submission form.

(b) Upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, the authority shall:

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;

2. Verify that the out-of-state high school or Department of Defense school is an accredited high school; and

3. Retain the Curriculum Certification form on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

(a) Has earned a base scholarship award in high school;

(b) Has completed the KEES curriculum as set forth in subsection (2) of this section;

(c) Has graduated from a Kentucky high school, except as established in Section 2(4) or 3 of this administrative regulation; and

(d) Is enrolled in a participating institution in an eligible program.

(2) Except as established in subsection (4) of this section, the KEES curriculum shall consist of the curriculum standards established in 704 KAR 3:305.

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(7) shall be eligible to earn a KEES award for that year upon:

(a) Completion of no fewer than three (3) courses of study; and

(b) Satisfying the provisions of KRS 164.7879.

(4) Except as established in subsection (5) of this section, a high school may substitute an integrated, applied, interdisciplinary, or higher level course for a required course or required academic and career interest standards-based learning experience if the course:

(a) Provides the same or greater academic rigor and the course covers or exceeds the minimum required content areas established in 703 KAR 4:060; or

(b) Is an honors course, cooperative education course, AP course, IB course, CAI course, dual credit course, or a course taken at a postsecondary education institution.

(5) Beginning with the 2018-2019 academic year, each cooperative education course taken during an academic year shall satisfy KEES curriculum requirements if the course has been approved by the Office of Career and Technical Education as a work-based learning experience in a career pathway pursuant to 705 KAR 4:123 and 705 KAR 4:041. For all other cooperative education coursework, only one (1) course per academic year shall count for purposes of satisfying KEES curriculum requirements.

(6) A high school annually shall provide written documentation to a student advising if the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the authority pursuant to 11 KAR 15:010, Section 1(10).

(2) Except as established in subsection (4) of this section, an eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board.

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(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:

(a) Landscape architecture (04.0601); and

(b) Engineering if enrollment in the engineering program has been continuous (14.0101, 14.201, 14.0301, 14.401, 14.501, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1301, 14.1401, 14.1701, 14.1801, 14.1901, 14.2101, 14.2301, 14.2401, 14.2801, 14.9999.01, 14.3501).

(4) Pursuant to KRS 164.7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

(a) Has not received eight (8) academic terms of a KEES award;

(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:

1. Pharm. D;

2. A [The optometry or] veterinary medicine program[s] at an institution that participates in, which is a part of] the Kentucky Contract Spaces Program; or

3. An optometric medicine program at an institution that participates in the Optometry Scholarship Program [A program contained on the Equivalent Undergraduate Programs List]; and

(c) Has not completed a baccalaureate degree.

Section 6. Postsecondary Grade Point Average Calculation and Reporting. (1) Each participating institution shall report to the Authority the cumulative grade point average for each KEES recipient enrolled in that institution no later than June 30 after the completion of the award period.

(2) The cumulative grade point average shall be reported to the hundredths decimal place. Any cumulative grade point average which contains a number of five (5) or greater in the thousandths place shall be rounded up to the nearest hundredth. Any cumulative grade point average which contains a number less than five (5) in the thousandths place shall be rounded down to the nearest hundredth.

(3) If a KEES recipient had an incomplete grade when the cumulative grade point average was initially reported to the Authority and subsequently receives a final grade, the participating institution shall recalculate the recipient's cumulative grade point average as of the end of the appropriate award period and report the updated cumulative grade point average to the Authority.

Section 7. SAT Conversion Table. (1) Pursuant to KRS 164.7874(3), the [following] SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken prior to the 2011-2012 academic year.[:]

SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table may be used to relate SAT I V+M scores to ACT Composite scores. The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table. Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471). January, 1998

(2) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the 2011-2012 academic year, but

prior to March 2016. Only the scores from the critical reasoning and mathematics sections of the SAT within a single exam administration shall be considered for KEES supplemental awards.

SAT I CR+M	ACT Composite	SAT I CR+M	ACT Composite	SAT I CR+M	ACT Composite	SAT I CR+M	ACT Composite	SAT I CR+M	ACT Composite
1600	36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	13
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	35	1320	29	1090	24	860	18	630	13

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1540	35	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	12
1520	34	1290	29	1060	23	830	17	600	12
1510	34	1280	28	1050	23	820	17	590	12
1500	34	1270	28	1040	22	810	16	580	12
1490	34	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	27	1010	21	780	16	550	11
1460	33	1230	27	1000	21	770	16	540	11
1450	33	1220	27	990	21	760	15	530	11
1440	33	1210	27	980	21	750	15	520	11
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15		
1410	32	1180	26	950	20	720	15		
1400	32	1170	26	940	20	710	14		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table may be used to relate SAT CR+M scores to ACT Composite scores.

The estimates are based on the test scores of 300,437 students who took both the ACT and the SAT CR+M between September 2004 and June 2006. Because the ACT and the SAT CR+M have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).
June, 2008

(3) Pursuant to KRS 164.7874(3), the SAT and ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the March 2016-2017 academic year, but prior to July 2018. Only the scores from the

Evidence-Based Reading and Writing Sections (ERW+M) of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2 Concordance Between SAT ERW+M Score and ACT Composite Score									
SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite
1600	36	1380	29	1160	24	940	18	720	13
1590	35	1370	29	1150	23	930	17	710	12
1580	35	1360	29	1140	23	920	17	700	12
1570	35	1350	29	1130	23	910	17	690	12
1560	35	1340	28	1120	22	900	17	680	12
1550	34	1330	28	1110	22	890	16	670	12
1540	34	1320	28	1100	22	880	16	660	12
1530	34	1310	28	1090	21	870	16	650	12
1520	34	1300	27	1080	21	860	16	640	12
1510	33	1290	27	1070	21	850	15	630	12
1500	33	1280	27	1060	21	840	15	620	11
1490	32	1270	26	1050	20	830	15	610	11
1480	32	1260	26	1040	20	820	15	600	11
1470	32	1250	26	1030	20	810	15	590	11
1460	32	1240	26	1020	20	800	14	580	11
1450	32	1230	25	1010	19	790	14	570	11
1440	31	1220	25	1000	19	780	14	560	11
1430	31	1210	25	990	19	770	14		
1420	31	1200	25	980	19	760	14		
1410	30	1190	24	970	18	750	13		
1400	30	1180	24	960	18	740	13		
1390	30	1170	24	950	18	730	13		

(4) Pursuant to KRS 164.7874(3), the SAT and ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after July 2018. Only the scores from the Evidence-Based Reading and Writing Sections (ERW+M) of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2 Concordance Between SAT ERW+M Score and ACT Composite Score									
SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite
1600	36	1400	31	1200	25	1000	19	800	14
1590	36	1390	31	1190	24	990	19	790	14
1580	36	1380	30	1180	24	980	18	780	14
1570	36	1370	30	1170	24	970	18	770	13
1560	35	1360	30	1160	24	960	18	760	13
1550	35	1350	29	1150	23	950	17	750	13

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1540	35	1340	29	1140	23	940	17	740	13
1530	35	1330	29	1130	23	930	17	730	13
1520	34	1320	28	1120	22	920	17	720	12
1510	34	1310	28	1110	22	910	16	710	12
1500	34	1300	28	1100	22	900	16	700	12
1490	33	1290	27	1090	21	890	16	690	12
1480	33	1280	27	1080	22	880	16	680	11
1470	33	1270	27	1070	21	870	15	670	11
1460	33	1260	27	1060	21	860	15	660	11
1450	33	1250	26	1050	20	850	15	650	11
1440	32	1240	26	1040	20	840	15	640	10
1430	32	1230	26	1030	20	830	15	630	10
1420	32	1220	25	1020	19	820	14	620	10
1410	31	1210	25	1010	19	810	14	610	10

Section 8. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national, or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The date of the student's graduation is May 1999 or thereafter;
- (c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and
- (d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national, or permanent resident of the United States and who has not graduated from any Kentucky or out-of-state public or nonpublic high school shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The student's 18th birthday occurs on or after January 1, 1999;
- (c) The student takes and receives a GED diploma in Kentucky:
 1. Prior to being admitted to a participating institution; and
 2. Within five (5) years after attaining eighteen (18) years of age;
- (d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
- (e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

- (a) The parents meet the provisions of KRS 164.7879(2)(c)1.a. and b.;
- (b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
- (c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.

(4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(5)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the authority of the student's eligibility.

Section 9. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of attaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 10. Supplemental Award for Achievement on Examinations. (1) Pursuant to KRS 164.7879(3)(c) and (d), a supplemental award shall be provided for achievement on AP, IB, or CAI examinations to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high

school.

(2)(a) An eligible high school shall report the status of each student as eligible or ineligible for free and reduced price lunch to the authority on an annual basis.

(b) In determining a high school student's free and reduced price lunch eligibility, the high school shall utilize the income eligibility guidelines published each year by the United States Department of Agriculture, Food and Nutrition Service, available at www.fns.usda.gov/school-meals/income-eligibility-guidelines.

Section 11. Administrative Responsibilities and Expenses of Program. (1) The authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund established by KRS 164.7877(1) and (3).

(2) The authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The authority shall develop an allotment schedule for the release of the administrative funds.

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

- (a) "Home of Record Certification", June 2005;
- (b) "Curriculum Certification", June 2005; and
- (c) "Data Submission", June 2005; and
- (d) "Equivalent Undergraduate Programs List", June 2005.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Hon. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@khea.com.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (As Amended at ARRS, July 14, 2022)

11 KAR 16:020. Early Childhood Development Scholarship Program disbursement process.

RELATES TO: KRS 164.518

STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes procedures for disbursement of the monies awarded under the Early Childhood Development Scholarship Program.

Section 1. Eligibility Verification. [Disbursement Process.] Once the census date for each academic term has passed, the institution

shall verify the eligibility of each student and submit to the authority a complete and accurate eligibility verification record that shall include ~~[the following]~~:

- (1) The student's enrollment status; and
- (2) The number of credit hours in which the student is enrolled for the academic term.

Section 2. Disbursement and Delivery of Funds. (1) Within thirty (30) days following receipt by the authority of the eligibility verification data ~~[information required by 11 KAR 16:010, Section 3(4)]~~, the authority shall disburse ~~[remit monies awarded under the]~~ Early Childhood Development Scholarship ~~[Program by electronic]~~ funds ~~[transfer delivered]~~ to the participating institution ~~[on behalf of the scholarship recipient]~~ for subsequent delivery to the eligible scholarship recipient.

(2) ~~[The authority shall send to the participating educational institution a disbursement roster indicating each recipient's name, Social Security number, and scholarship amount.]~~

(3) The participating educational institution shall hold the funds solely for the benefit of the scholarship recipient and the authority until the student has registered for classes for the academic term for which the scholarship is awarded.

(4)(a) Scholarship proceeds shall be used by the recipient only for payment of tuition and mandatory fees to the participating educational institution.

~~[(b) Upon the scholarship recipient's registration, the participating educational institution shall:~~

1. Credit the scholarship recipient's account; and
2. Notify the recipient in writing that it has credited the account.]

~~(3)(e) The participating institution shall:~~

~~(a) Return to the authority scholarship funds that exceed the amount of tuition and mandatory fees charged by the institution to the scholarship recipient for the academic term based upon the recipient's enrollment status at the time of eligibility verification; registration.]~~

(b) Be responsible for proper disbursement of scholarship funds to each eligible student during the academic term for which each award is intended;

(c) Be liable for disbursement to the wrong individual or to an ineligible student, or for untimely disbursement pursuant to this section; and

~~(d) [The authority may, without precluding other remedies provided in 11 KAR 4:020, recover from the participating institution scholarship funds not returned pursuant to paragraph (c) of this subsection by setoff against any other funds payable to the participating institution by the authority.]~~

Section 2. Disbursement Roster (1) The participating educational institution shall indicate the following on the disbursement roster:

- (a) The date funds were either credited to the scholarship recipient's account or disbursed to the recipient;
- (b) The name of a recipient for whom funds are being returned;
- (c) The amount being returned; and
- (d) The reason funds are being returned.

(2) The participating educational institution shall return to the authority, according to instructions attached to the roster, all funds advanced that remain undisbursed to students who were awarded scholarships. The participating institution shall retain a copy of the disbursement roster for its records. The participating educational institution shall return the undisbursed scholarship funds to the authority by electronic funds transfer.

(3) The instructions accompanying the disbursement roster shall specify:

- (a) Conditions under which the scholarship shall be disbursed to the benefit of the scholarship recipient;
- (b) Conditions under which the scholarship funds shall be returned to the authority; and
- (c) The date by which the roster and any undisbursed funds shall be returned to the authority.

(4) A participating educational institution that has not returned a disbursement roster or completed it according to the instructions shall not receive additional scholarship funds until it has complied

with the instructions identified in subsection (3) of this section. The authority may withhold any services and funds from the educational institution from the due date until the roster and all funds advanced, that remain undisbursed to eligible students, are received by the authority.

Section 3. Misdelivery of Funds. The participating institution shall be liable to the authority for delivery of scholarship funds to the wrong person or to an ineligible student and shall Make restitution to the authority of any ~~[an]~~ amount improperly delivered.

(4) Failure of the participating institution to make restitution as required shall, without precluding other remedies, be deemed cause for limitation, suspension, or termination of the participation of the institution in accordance with 11 KAR 4:020.

CONTACT PERSON: Hon. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (As Amended at ARRS, July 14, 2022)

11 KAR 22:010. Dual Credit Scholarship Program.

RELATES TO: KRS 164.786

STATUTORY AUTHORITY: KRS 164.786(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.786(3) requires the Kentucky Higher Education Assistance Authority to administer the Dual Credit Scholarship program and to promulgate administrative regulations needed for administration thereof. This administrative regulation establishes the provisions for administration of this scholarship program, including definitions, applications, awards, disbursements, refunds, and reporting.

Section 1. Definitions. (1) "Academic term" is defined by/in KRS 164.786(1)(a).

(2) "Academic year" is defined by/in KRS 164.786(1)(b).

(3) "Approved dual credit course" is defined by/in KRS 164.786(1)(c).

(4) "Authority" is defined by/in KRS 164.786(1)(d).

(5) "Certified high school" means any Kentucky public high school, a high school of a model or practice school under KRS 164.380, and any private, parochial, or church school located in Kentucky that has been certified by the Kentucky Board of Education as voluntarily complying with the curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160.

(6) "Dual credit tuition rate ceiling" is defined by/in KRS 164.786(1)(f).

(7) "Eligible high school student" is defined by/in KRS 164.786(1)(g).

(8) "Non-certified high school" means any private, parochial, church, or home school located in Kentucky that has not been certified by the Kentucky Board of Education.

(9) "Participating institution" is defined by/in KRS 164.786(1)(h).

(10) "Priority consideration" means that applications received prior to October 1 in a particular year shall be considered first for scholarship awards within that academic year.

Section 2. Application and Award. (1) The method by which an application is submitted for an eligible high school student shall be determined by the type of high school in which the student is enrolled.

(a) A certified high school shall submit to the authority a data file in a format specified by the authority that identifies each eligible high school student who ~~[that]~~ is enrolled in an approved dual credit course.

1. Certified high school file submissions shall ~~[must]~~ be

submitted to the authority by September 15 for the fall semester and February 1 for the spring semester of the academic year in which the award is made.

2. Within two **(2)** business days of receipt of a data file from a certified high school, the authority shall load the data provided by the high school and create a unique scholarship link on each student's account at khea.com.

3. Each eligible high school student shall then sign in at khea.com to access their scholarship application and designate their choice of participating institution and semester for each scholarship award being requested.

(b) An eligible high school student attending a non-certified high school shall submit to the authority a Dual Credit Scholarship Application as required by 11 KAR 4:080, Section 1(10).

(2) To the extent funds are available, the authority shall award scholarships to each eligible high school student and notify the student's participating institution of the award.

(3) The priority consideration deadline for an eligible high school student to submit a scholarship request for the fall semester is October 1. Final requests for both fall and spring semester scholarships shall be submitted no later than March 1 of the academic year in which the award is made.

Section 3. Enrollment Verification. (1) The participating institution shall verify the eligibility of each student and submit to the authority a complete and accurate enrollment verification record that shall include ~~[the following]~~:

(a) The prefix and number of the approved dual credit course the student is enrolled in;

(b) The number of credit hours of the approved dual credit course;

(c) The per-credit hour cost being charged by the participating institution, not to exceed the dual credit tuition rate ceiling established by the authority; and

(d) The academic year and academic term of the approved dual credit course being reported.

(2) ~~[If in the event]~~ the approved dual credit course has a required laboratory, the participating institution shall report the laboratory prefix, number, and credit hours in addition to the course information specified in subsection (1) of this section. The cost of the laboratory shall ~~[will]~~ be paid in addition to the approved dual credit course as part of the scholarship award and shall not count against the student's course eligibility limit.

Section 4. Disbursement and Delivery of Funds. (1) Within thirty (30) days following receipt of the enrollment verification record, scholarship funds shall be disbursed by the authority to the participating institution for subsequent application to the account of the eligible high school student.

(2) The amount disbursed by the authority shall equal the number of credit hours

in which the student is enrolled for the approved dual credit course multiplied by the per credit hour cost for each scholarship award, not to exceed the dual credit tuition rate ceiling.

(3) The participating institution shall:

(a) Be responsible for proper disbursement of scholarship funds to each eligible student during the academic term for which each award is intended;

(b) Be liable for disbursement to the wrong individual or to an ineligible student, or for untimely disbursement pursuant to this section; and

(c) Make restitution to the authority of any amount improperly disbursed.

(4) Failure of the participating institution to make restitution when required shall, without precluding other remedies, be cause for limitation, suspension, or termination of the participation of the participating institution in accordance with 11 KAR 4:020.

Section 5. Returns. (1) The participating institution shall return the full scholarship disbursement amount to the authority for any course or laboratory in which enrollment was reported in error or the student was not enrolled ~~[in the course]~~.

(2) The participating institution shall not assess any charges to

the student ~~[if should]~~ a return of funds to the authority ~~[is be]~~ required.

(3) No later than thirty (30) days after the end of the term in which the student's enrollment was reported in error, the participating institution shall remit to the authority the amount of scholarship funds allocated to be returned as soon as possible ~~but [no later than thirty (30) days after the end of the term in which the student's enrollment was reported in error]~~.

(4) The participating institution shall notify the authority of the return through the electronic process established for that purpose by the authority. The return information shall include:

(a) The student's name and Social Security number;

(b) The reason for the refund or repayment;

(c) The amount being returned;

(d) The semester and year for which the award was made; and

(e) The course associated with the return.

Section 6. Reporting. (1) Within thirty (30) days of the end of each academic term, the participating institution shall submit to the authority the student's final grade for each course for which scholarship funds were received, except that the final grade for an approved dual credit course reported as a yearlong course and disbursed for the fall academic term shall be submitted to the authority within 30 days of the end of the spring academic term.

(2) Reports under this section shall be completed before funds for the next academic term under this program will be disbursed by the authority.

Section 7. Records. A participating institution shall:

(1) Establish an organized system of records pertaining to scholarship recipient eligibility;

(2) Maintain these records for a period of not less than three (3) years after the award year in which the recipient ceased enrollment; and

(3) Upon request, make available to the authority:

(a) All records relied upon by that participating institution to certify that any recipient of funds from the authority is for an eligible student; and

(b) Information necessary to verify that the participating institution has complied with:

1. KRS 164.786;

2. 11 KAR Chapter 22; and

3. Representations and requirements contained in its agreement with the authority.

CONTACT PERSON: Hon. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@khea.com.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student and Administrative Services (As Amended at ARRS, July 14, 2022)

11 KAR 23:010. Optometry Scholarship Program.

RELATES TO: KRS 164.7870

STATUTORY AUTHORITY: KRS 164.7870(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7870(3) requires the Kentucky Higher Education Assistance Authority to administer the Optometry Scholarship program and to promulgate administrative regulations needed for administration ~~[of the—] thereof~~. This administrative regulation establishes the provisions for administration of this scholarship program, including definitions, applications, awards, disbursements, refunds, and reporting.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester at an eligible institution and does not include summer sessions.

(2) "Academic year" means a period of time that begins July 1 of a calendar year and ends June 30 of the next succeeding

calendar year.

- (3) "Eligible institution" is defined by/in KRS 164.7870(2)(b).
- (4) "Eligible student" is defined by/in KRS 164.7870(2)(d).
- (5) "Optometry Scholarship Committee" is defined by/in KRS 164.7870(2)(e).

Section 2. Application and Award. (1) ~~In~~ order for an eligible student to be considered for an award under this program, the student shall submit the following via the online Optometry Scholarship portal at <https://www.kheaa.com>:

- (a) An Optometry Scholarship Application;
- (b) Documentation that supports a Kentucky residency determination under 13 KAR 2:045; and
- (c) An official transcript from each postsecondary institution attended as an undergraduate student.

(2) The application period for this program shall be July 1 through December 1 preceding the academic year for which the initial scholarship is awarded.

(3) Once selected as a scholarship recipient, the scholarship award for an eligible student shall be renewed automatically each year without reapplication provided the eligible student maintains continuous enrollment in an approved program at an eligible institution.

(4) The maximum duration of scholarship receipt shall be/is limited to eight academic terms or completion of the approved program of study, whichever occurs first.

Section 3. Optometry Scholarship Committee and Recipient Selection. (1) At the close of the application period, the authority shall convene the Optometry Scholarship Committee for the purpose of selecting recipients for the next academic year from the pool of applications submitted by eligible students.

(a) The authority shall recommend to the Committee the number and amount of scholarships to be awarded based on the amount of funds available for the program.

(b) The scholarship recipient selection process shall/will conclude on or before January 15 of the year preceding the start of academic year in which the scholarship is awarded.

(2) The committee representative from an eligible institution located outside the Commonwealth shall rotate on a two ~~(2) f~~-year basis in even numbered years.

Section 4. Recipient Notification and Award Acceptance. (1) The authority shall notify all applicants of the Optometry Scholarship Committee's award or denial determination on or before January 31 preceding the start of the award year.

(2) Eligible students who are selected to receive a scholarship award shall indicate to the authority which eligible institution they will attend by March 1 preceding the start of the award year.

Section 5. Enrollment Verification. At the start of each academic term, the authority shall/will provide a roster to each eligible institution to be completed by the institution to verify each eligible student's enrollment in an approved program of study.

Section 6. Disbursement and Delivery of Funds. (1) Within thirty (30) days following receipt of the enrollment verification record, scholarship funds shall be disbursed by the authority to the eligible institution for subsequent application to the account of the eligible student.

(2) The amount disbursed by the authority for each academic term shall equal one-half of the annual award amount.

(3) The eligible institution shall:

(a) Be responsible for proper disbursement of scholarship funds to each eligible student during the academic term for which each award is intended;

(b) Not make scholarship funds available to the recipient nor apply those funds to the recipient's account after the end of the academic term for which the funds are received by the institution;

(c) Be liable for disbursement to the wrong individual or to an ineligible student, or for untimely disbursement pursuant to this section; and

(d) Make restitution to the authority of any amount improperly disbursed.

(4) Failure of the institution to make restitution when required shall, without precluding other remedies, be cause for limitation, suspension, or termination of the participation of the institution in accordance with 11 KAR 4:020.

Section 7. Refunds and Returns. Refunds by the institution transmitted to the authority shall be accompanied by:

- (1) The student's name and birthdate;
- (2) The reason for the refund or repayment;
- (3) The date of enrollment status change; and
- (4) The semester and year.

CONTACT PERSON: Hon. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293, email dbarber@kheaa.com.

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (As Amended at ARRS, July 14, 2022)

105 KAR 1:390. Employment after retirement.

RELATES TO: KRS 15.420(2)(a), 16.010, 16.505(+5), 61.505, 61.510, 61.565, 61.590, 61.637, 61.675, 61.702, 70.291 - 70.293, 78.510(+3, +18), 78.545, 78.5540, 78.625, 78.635, 95.022, 158.441, 164.952, 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.505(1)(g)(f), 61.590, 61.637(18), 78.5540(5)(61.645(9)(e))

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g)(f) authorizes the Kentucky Public Pensions Authority[61.645(9)(e) requires the Board of Trustees of Kentucky Retirement Systems] to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with[necessary or proper in order to carry out the purposes and provisions of] KRS 16.505 to 16.652, 61.510 to 61.705, [16.505 to 16.652,]and 78.510 to 78.852. KRS 61.637(18) and 78.5540(5) requires the[requires] Kentucky Public Pensions Authority[Retirement Systems] to promulgate administrative regulations to implement the requirements of KRS 61.637 and 78.5540. This administrative regulation concerns the administration of KRS 61.637 and 78.5540 in conjunction with federal law regarding bona fide separation from service and changes in employment relationship if a retired member returns to employment with a [Kentucky Retirement Systems]participating employer in a retirement system operated by the Kentucky Public Pensions Authority. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statutes and administrative regulations (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax qualified status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.[This administrative regulation establishes provisions relating to employment after retirement.]

Section 1. Definitions.

(1) [Unless otherwise defined in this section, the definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this administrative regulation.]

(2) Prior to April 1, 2021, "Agency" means:

(a) Prior to April 1, 2021, the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System; and;

(b) Beginning[Effective] April 1, 2021, ["agency" means] the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement

Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(2) "Employee" means a retired member who is performing services for an employer in a manner that demonstrates an employment relationship under the common law factors used by the Internal Revenue Service.

(3) "Employer" is defined by KRS 16.505(3), 61.510(6), and 78.510(7).

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

(5) "Fiscal Year" is defined by KRS 16.505(32), 61.510(19), and 78.510(19).

(6) "Hazardous position" is defined by KRS 78.510(42).

(7) "Member" is defined by KRS 16.505(21), 61.510(8), and 78.510(8).

(8) "Month" is defined by KRS 16.505(34), 61.510(35), and 78.510(32).

(9) "Nonhazardous position" is defined by KRS 61.510(44) and 78.510(41).

(10)(4) "Retirement" [initial retirement] date means the member's effective retirement date as described in KRS 61.590(5) and 78.545.

(5) "Non-participating position" means any position of employment with a participating employer other than a regular full-time position [as defined by KRS 61.510(21), 78.510(21), and 61.680(6)] or a regular full-time officer position [as defined by KRS 16.505(22)].

(11)(6)(2) "Participating employer" means any employer that participates in one (1) of the systems operated [administered] by the agency [Kentucky Retirement Systems].

(12)(7)(3) "Participating position" means a regular full-time position [as defined by KRS 61.510(21)], and [78.510(21), and 61.680(6)] or a regular full-time officer position [as defined by KRS 16.505(22)].

(13)(8)(4) "Reemployment" means the retired member's first date of employment with a participating employer following his or her most recent [initial] retirement date.

(14) "Regular full-time officer position" is defined by KRS 16.505(22).

(15) "Regular full-time position" is defined by KRS 61.510(21), 61.680(6), 78.510(21), and 78.545(16).

(16) "Retired member" is defined by KRS 16.505(11), 61.510(24), and 78.510(23).

(17) "Retirement date" means the member's effective retirement date as described in KRS 61.590(5) and 78.545(4).

(18) "Retirement office" is defined by KRS 16.505(28), 61.510(31), and 78.510(29).

(19) "School board" is defined by KRS 78.510(4).

(20) "Service" is defined by KRS 16.505(6), 61.510(9), and 78.510(9).

(21)(9) "Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

(22) "Volunteer" is defined by KRS 61.510(42) and 78.510(39).

Section 2. Form 6000 Certification.

(1) In order to retire with the systems operated by the agency [Kentucky Retirement Systems], an eligible member shall submit a Form 6000, Notification of Retirement, as incorporated by reference in 105 KAR 1:200. The Form 6000, Notification of Retirement, shall comply with the requirements of KRS 61.590, KRS 78.545, and 105 KAR 1:200.

(2) The agency [Kentucky Retirement Systems] shall not process a Form 6000, Notification of Retirement, until the member certifies on the Form 6000 that there is no prearranged agreement for reemployment with a participating employer after the member's [initial] retirement date.

Section 3. Employment After Retirement.

(1) A retired member who is reemployed with a participating employer in any position, including participating positions and non-participating positions, shall have:

(a) A bona fide separation from service as provided in subsection (2) of this section; and

(b) A break in service as provided in subsection (3) of this section.

(2)(a) "Bona fide separation from service" as provided in this section shall include a cessation of the employment relationship between the member and the member's employer without a prearranged agreement when the member retires that he or she will return to work for any participating employer in any capacity.

(b) "Prearranged agreement" as provided in this section shall not include reemployment accepted more than twelve (12) [calendar] months after the member's [initial] retirement date.

(c) An elected official's retirement shall be voided due to the existence of a prearranged agreement if, within twelve (12) months of [initial] retirement, the official is reelected and takes office in the same position as the elected official held prior to retirement [from which the official retired].

(3) "Break in service" as provided in this section shall require that:

(a) A member who retired from a hazardous position shall have a one (1) [calendar] month break in service before returning to work with any participating employer in a hazardous participating position.

(b) Except as provided in paragraph (a) of this subsection, a member who retired from a hazardous or nonhazardous position shall have a three (3) [calendar] month break in service before returning to work with any participating employer.

(4)(a) If a retired member seeks reemployment with a participating employer within twelve (12) months of his or her [initial] retirement date, then the following shall be filed at the retirement office:

(a) The [the] participating employer shall certify that there was no prearranged agreement on [The participating employer shall file at the retirement office] a completed Form 6751, Employer Certification Regarding Reemployment; [.]

(b) A [The retired member shall file at the retirement office a completed] Form 6754, Member Reemployment Certification, completed by the retired member; and

(c) Any other information requested by the agency from the participating employer and the retired member pursuant to KRS 61.637(8) and 78.5540(2)(a).

(5)(a) The agency [Kentucky Retirement Systems] shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and additional requested information.

(b) If the agency [Kentucky Retirement Systems] determines that the retired member failed to have a bona fide separation from service or a break in service and returned to work with any participating employer in any position, including a participating position or a non-participating position, the retired member's retirement shall be voided and he or she shall repay all retirement allowances, dependent child payments, and health plan premiums paid by the systems [Kentucky Retirement Systems].

Section 4. Independent Contractors and Leased Employees.

(1)(a) If a retired member seeks to provide services to a participating employer as an independent contractor, under a professional services contract, or as a leased employee [Both the retired member and the participating employer shall file written notice at the retirement office if.] within twelve (12) months of the retired member's [initial] retirement date, then the following shall be filed at the retirement office: [the retired member provides services to a participating employer as an independent contractor or as a leased employee.]

(a)(b) A [The participating employer shall file at the retirement office a] Form 6752, Employer Certification of Independent Contractor/Leased Employee, completed by the participating employer; [.]

(b)(c) A [The retired member shall file at the retirement office a completed] Form 6754, Member Reemployment Certification, completed by the member:

(c) ~~A[and a]~~ complete copy of any contract under which services are provided by the retired member to the participating employer; ~~and~~

(d) Any other information requested by the agency from the participating employer and the retired member pursuant to KRS 61.637(9) and 78.5540(2)(b).

(2) The agency shall apply common law factors used by the Internal Revenue Service (IRS), in accordance with IRS Publication 1779, to determine whether a retired member is an employee of the participating employer or an independent contractor of the participating employer.

(3)(a) The agency[Kentucky Retirement Systems] shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and requested information.

(b) If the agency[Kentucky Retirement Systems] determines that the retired member is an employee of the participating employer, rather than an independent contractor or leased employee through a leasing company, staffing agency, or other entity;

1.[.] The retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall ~~[be required to]~~ have a "bona fide separation from service" and "break in service[.]"; ~~and~~

2.[(c) If the agency determines that the retired member is an employee of the participating employer, rather than an independent contractor or leased employee through a leasing company, staffing agency, or other entity,] The employer shall ~~[be required to]~~ do the following:

a.[1.] Report the retired member as required by KRS 61.675, KRS 78.625, and 105 KAR 1:145;

b.[2.] Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and

c.[3.] Reimburse the systems for the cost of health insurance premiums paid by the systems for the retired member.

Section 5. Volunteers.

(1)(a) If a retired member seeks to volunteer with a participating employer~~[Both the retired member and participating employer shall file written notice at the retirement office if,]~~ within twelve (12) months of the retired member's [initial-]retirement date, then the following shall be filed at the retirement office:~~[the retired member seeks to volunteer with a participating employer,]~~

(a)(b) ~~A[The participating employer shall file at the retirement office a completed]~~ Form 6753, Employer Certification of Volunteer, completed by the participating employer;~~[-]~~

(b)(c) ~~A[The retired member shall file at the retirement office a completed]~~ Form 6754, Member Reemployment Certification, completed by the retired member; and

(c) Any other information requested by the agency from the participating employer and retired member pursuant to KRS 61.637(8) and 78.5540(2)(a).

(2)(a) The agency[Kentucky Retirement Systems] shall issue a final determination to the retired member no later than thirty (30) days after receipt of all required forms and requested information.

(b) If the Agency[Kentucky Retirement Systems] determines that the retired member is an employee of the participating employer, rather than a volunteer;

1.[.] The retired member shall be subject to the provisions of Section 3 of this administrative regulation and shall ~~[be required to]~~ have a "bona fide separation from service" and "break in service[.]"; ~~and~~

2.[(c) If the agency determines that the retired member is an employee of the participating employer, rather than a volunteer,] The employer shall ~~[be required to]~~ do the following:

a.[1.] Report the retired member as required by KRS 61.675, 78.625, and 105 KAR 1:145;

b.[2.] Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and

c.[3.] Reimburse the systems for the cost of health insurance premiums paid by the systems for the retired member.

Section 6. Health Insurance Premium Reimbursements for Retired Members Reemployed by Multiple Participating Employers.

(1) If a retired member is reemployed by multiple participating employers in a [calendar]month in positions that qualify as regular full-time[pursuant to KRS 61.510(21), 61.680(6), 78.510(21), and 78.545(16)], each participating employer shall be responsible for reimbursing the systems for a portion of the health insurance premium paid by the systems to provide coverage for the retired member for that [calendar]month that is equal to the cost of the premium divided by the number of participating employers that are not exempt from reimbursement of health insurance premiums.

(2) Participating employers that are exempt from reimbursement of health insurance premiums under Section 7 of this administrative regulation, or by virtue of being a school board employing the retired member for eighty (80) days or less during the fiscal year, are not responsible for health insurance premiums under this section.

Section 7. Exemption for Payment Of Employer Contributions and Reimbursement of Health Insurance Premiums for Retired Members Reemployed as Police Officers and School Resource Officers.

(1)(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the health insurance premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 for a term of appointment of no more than one (1) year if a completed Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are on file at the retirement office prior to the start of the retired member's term of appointment.

(b) If a completed Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are not on file at the retirement office prior to the start of the retired member's term of appointment as a police officer pursuant to KRS 70.291 to 70.293, then the participating employer shall be exempt from paying employer contributions and reimbursements of health insurance premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the [calendar]month after a completed Form 6760 and supporting documentation are on file at the retirement office.

(2)(a) For each subsequent term of reappointment after the initial term of appointment listed on the completed Form 6760, County Police or Sheriff Appointment of Retired Police Officer, described in subsection (1) of this section, the participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the health insurance premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 for a term of reappointment of no more than one (1) year if a completed Form 6764, Recertification of Retired Police Officer, is on file at the retirement office prior to the start of the retired member's term of reappointment.

(b) If a completed Form 6764, Recertification of Retired Police Officer, is not on file at the retirement office prior to the start of the retired member's term of reappointment as a police officer pursuant to KRS 70.291 to 70.293, then the participating employer shall be exempt from paying employer contributions and reimbursements of health insurance premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the [calendar]month after a completed Form 6764 and supporting documentation are on file at the retirement office.

(3)(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the health insurance premiums paid by the systems to provide coverage for a retired member reemployed as a school resource officer pursuant to KRS 158.441 for a term of appointment of no more than one (1) year if a completed Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the Form 6766 are on file at the retirement office prior to the start of the retired member's term of appointment.

(b) If a completed Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the

Form 6766 are not on file at the retirement office prior to the start of the retired member's term appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of health insurance premiums for a retired member reemployed as a school resource officer pursuant to KRS 158.441 effective in the [calendar] month after a completed Form 6766 and supporting documentation are on file at the retirement office.

(4)(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the health insurance premiums paid by the systems for a retired member reemployed as a Kentucky State Police school resource officer pursuant to KRS 158.441 for a term of appointment of no more than one (1) year if a completed Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are on file at the retirement office prior to the start of the retired member's term appointment.

(b) If a completed Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are not on file at the retirement office prior to the start of the retired member's term appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of health insurance premiums for a retired member reemployed as a Kentucky State Police school resource officer pursuant to KRS 158.441 effective in the [calendar] month after a completed Form 6767 and supporting documentation are on file at the retirement office.

(5)(a) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the health insurance premiums paid by the systems for a retired member reemployed as a police officer by a postsecondary institution pursuant to KRS 164.952 for a term of appointment of no more than one (1) year if a completed Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are on file at the retirement office prior to the start of the retired member's term appointment.

(b) If a completed Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are not on file at the retirement office prior to the start of the retired member's term appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of health insurance premiums for a retired member reemployed as a police officer by a postsecondary institution pursuant to KRS 164.952 in the [calendar] month after a completed Form 6768 and supporting documentation are on file at the retirement office.

(6) A participating employer shall not be eligible for exemption from payment of employer contributions or from reimbursing the systems for the costs of health insurance premiums for any retired members reemployed as a police officer pursuant to KRS 95.022 unless a Form 6769, Certification of Employed Police Officers Calendar Year 2015, is on file at the retirement office.

(7)(a) A participating employer with a Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file at the retirement office shall be exempt from paying employer contributions and from reimbursing the systems for the costs of health insurance premiums for a retired member reemployed as a police officer pursuant to KRS 95.022 for a term of appointment of no more than one (1) year if a completed Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are on file at the retirement office prior to the start of the retired member's term of appointment.

(b) If a completed Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are not on file at the retirement office prior to the start of the retired member's term of appointment, then the participating employer with a Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file at the retirement office shall be exempt from paying employer contributions and reimbursements of health insurance premiums for a retired member reemployed as a police officer pursuant to KRS 95.022 effective in the [calendar]

month after a completed Form 6770 and supporting documentation are on file at the retirement office.

(8)(a) Each subsequent term of reappointment after the initial term of appointment listed on the completed Form 6770, City Appointment of Retired Police Officer, described in subsection (7) of this section, the participating employer with a Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file shall be exempt from paying employer contributions and health insurance premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 95.022 for a term of reappointment of no more than one (1) year if a completed Form 6774, City Recertification of Retired Police Officer, is on file at the retirement office prior to the start of the retired member's term of reappointment.

(b) If a completed Form 6774, City Recertification of Retired Police Officer, is not on file at the retirement office prior to the start of the retired member's term of reappointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of health insurance premiums for retired member reemployed as a police officer pursuant to KRS 95.022 in the [calendar] month after a completed Form ~~6774~~6764 is on file at the retirement office.

Section 8.~~[Section 6.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6751, "Employer Certification Regarding Reemployment," ~~March 2022~~June 2019;

(b) Form 6752, "Employer Certification of Independent Contractor/Leased Employee," ~~April 2021~~June 2019;

(c) Form 6753, "Employer Certification of Volunteer," ~~April 2021~~June 2019; and]

(d) Form 6754, "Member Reemployment Certification," ~~April 2021~~;

(e) Form 6760, "County Police or Sheriff Appointment of Retired Police Officer," ~~March 2022~~;

(f) **Form 6764. "Recertification of Retired Police Officer."** ~~June 2019~~;

(g) Form 6766, "Appointment of Retired School Resource Officer," ~~March 2022~~;

(h)~~(g)~~ Form 6767, "Appointment of Kentucky State Police School Resource Officer," ~~March 2022~~;

(i)~~(h)~~ Form 6768, "Postsecondary Institution Appointment of Retired Police Officer," ~~March 2022~~;

(j)~~(i)~~ Form 6769, "Certification of Employed Police Officers Calendar Year 2015," ~~July 2016~~;

(k)~~(j)~~ Form 6770, "City Appointment of Retired Police Officer," ~~March 2022~~and

(l)~~(k)~~ Form 6774, "City Recertification of Retired Police Officer," ~~July 2016~~and~~June 2019~~;

(m) **Internal Revenue Service Publication 1779, "Independent Contractor or Employee," March 2012.**

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

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.

BOARD AND COMMISSIONS Board of Pharmacy (As Amended at ARRS, July 14, 2022)

201 KAR 2:020. Examination.

RELATES TO: KRS 218A.205~~(8)~~(7), 315.050

VOLUME 49, NUMBER 2– AUGUST 1, 2022

STATUTORY AUTHORITY: KRS 218A.205~~(8)(7)~~, 315.050(2), 315.191(1), (2), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.050(2) and 315.191(1)(c) authorize the board to promulgate administrative regulations to prescribe the time, place, method, manner, scope, and subjects of examinations. KRS 218A.205~~(8)(7)~~ requires the board to establish requirements for background checks for licensees. This administrative regulation establishes the examination and application requirements for obtaining a license to practice pharmacy in Kentucky.

Section 1. The examination for licensure shall include:

- (1) The North American Pharmacist Licensure Examination (NAPLEX); and
- (2) The Multistate Pharmacy Jurisprudence Examination (MPJE).

Section 2. Both the NAPLEX and the MPJE examinations are graded as pass or fail.~~[The passing score on the required examinations shall be:]~~

- ~~[(1)] [At least seventy-five (75) on the basis of the NAPLEX and the MPJE grades shall not be used in computing the NAPLEX; and]~~
- ~~[(2)] [At least seventy-five (75) on the basis of the MPJE.]~~

Section 3. If an applicant fails an examination~~[to obtain the necessary scores in any of the tests]~~ described in Section 2 of this administrative regulation, the applicant may upon proper application retake the examination~~[tests]~~ upon the payment of the fee set forth in 201 KAR 2:050 plus any direct costs for test materials and supplies. An applicant is limited to three (3) attempts for each examination without further board approval. An applicant is limited to a lifetime limit of five (5) attempts on each examination~~[who has failed any test may retake that test within one (1) year of the date the applicant first failed the test without having to reapply].~~

Section 4. If after three (3) examination attempts, the applicant has not passed, to qualify for two (2) additional attempts, the applicant shall~~[must]~~.

- (1) For the NAPLEX, complete a refresher course and submit to the Board of Pharmacy a certificate of completion; and
- (2) For the MPJE, submit to the Board of Pharmacy:
 - (a) Proof of (5) five hours of ACPE or board approved continuing education in the topic of pharmacy law;~~[;]~~ or
 - (b) A certificate of completion of a refresher course.

Section 5. All results of examinations shall be preserved according to the Board of Pharmacy Record Retention Schedule.

Section 6.~~[Section 5.]~~ ~~[Fees submitted with an application shall be nonrefundable.]~~

~~[Section 6.]~~ Prior to approval for examination, an applicant shall:

- (1) Submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation;~~[-and]~~
- (2) Submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services;~~[-]~~
- (3) Submit an Initial Application for Pharmacist Licensure that reports:
 - (a) Name, maiden, and other names used currently or previously;
 - (b) Address and telephone number;
 - (c) Date of birth;
 - (d) Social Security number;
 - (e) Citizenship;
 - (f) Sex;
 - (g) Name of pharmacy school;
 - (h) Intern Registration Number;
 - (i) Record of any conviction for any felony or misdemeanor offense;
 - (j) Record of any state licensing agency refusal of licensure, failure of examination, or refusal of examination; and
 - (k) Certificate of moral standing.

~~(4) Submit a Certification of College~~[pharmacy school]~~ Graduation completed by the Dean of the College of Pharmacy where the applicant graduated pharmacy school; and~~

~~(5) Submit a Certification of Intern Hours completed by the College of Pharmacy where the applicant graduated, or the State Board of Pharmacy if the hours are outside of Kentucky.~~

Section 7. ~~[License,]~~Fee. An applicant shall submit~~[-]~~

~~[(1)] [An Initial Application for Pharmacist Licensure pursuant to KRS 315.050; and]~~

~~[(2)] [As appropriate,] the fee established by 201 KAR 2:050, Section 1(1).~~

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Initial Application for Pharmacist Licensure", Form 1, 3/2022[12/2019];

(b) ~~[-]~~ is incorporated by reference.

(2) "Certification of College Graduation", Form 2, 03/2022; and

(c) ~~[-]~~ is incorporated by reference.

(3) "Certification of Intern Hours", Form 3, 03/2022.

(2) ~~[-]~~ is incorporated by reference.

(4) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/Forms/Pages/default.aspx>.

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

BOARDS AND COMMISSIONS

Board of Pharmacy

(As Amended at ARRS, July 14, 2022)

201 KAR 2:225. Special limited pharmacy permit – Medical gas.

RELATES TO: KRS 217.015(11), 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.020, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative~~[administrate]~~~~[administrative]~~ regulations to regulate and control all matters set forth in KRS Chapter 315 relating to pharmacists and pharmacies. This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those entities that distribute medical gases.

Section 1. Definitions.

(1) "Medical gases" means gases (including liquefied gases) classified by FDA as drugs or devices that are used for medical applications and which may be stored and administered through the use of Medical Gas Related Equipment, which may or may not be required under Federal or State law for the immediate container to bear the label, "Rx only" or "Caution: Federal or State law prohibits dispensing without a prescription.

(2) "Special limited pharmacy permit~~[permits]~~~~[permit]~~" means a permit issued to a pharmacy that provides miscellaneous specialized pharmacy service and functions.

Section 2. General Requirements.

(1)(a) An applicant for a special limited pharmacy permit for medical gases shall comply with the requirements of 201 KAR 2:180, except Section 5 and 201 KAR 2:205, except that the pharmacist-in-

charge designated on the special permit shall be exempt from the requirements of 201 KAR 2:205, Section 2(2).

(b) The pharmacist-in-charge shall review the records and do an onsite visit of the special limited pharmacy permit ~~applicant~~~~[application]~~[applicant] for medical gases not less than once each quarter.

(2) An applicant for a special limited pharmacy permit for medical gases shall prepare and adopt a policy and procedures manual that sets forth a detailed description of how the:

(a) Operation will comply with applicable federal, state, or local laws or administrative regulations; and

(b) Licensee will maintain the premises so that the medical gas remains secure and complies with applicable compendial monographs of official pharmacopoeias.

(3) An applicant for a special limited pharmacy permit for medical ~~gases~~~~[gas]~~[gases] shall be inspected by the board prior to the issuance of the license.

Section 3. Qualifications for License.

(1) The board shall consider the following in reviewing the qualifications of an applicant for a special limited pharmacy permit for medical gases:

(a) The applicant's experience in the sale or distribution of prescription drugs, including controlled substances;

(b) A felony conviction of the applicant under federal, state, or local laws;

(c) The furnishing by the applicant of false or fraudulent material in a previous application for:

1. A special limited pharmacy permit for medical gases; or
2. A federal or state medical assistance program;

(d) Suspension or revocation of an applicant's license or permit by federal, state, or local government; and

(e) Compliance with requirements under a previously granted license or permit.

(2) The board shall deny an application for a special limited pharmacy permit for medical gases, if an applicant has:

(a) Been convicted for a violation of federal, state, or local laws relating to:

1. The practice of pharmacy;
2. Drugs; or
3. Federal or state medical assistance programs.

(b) Furnished false or fraudulent material in the application for a special limited pharmacy permit for medical gases;

(c) Failed to maintain or make available required records to the:

1. Board; or
2. Federal, state, or local law enforcement officials;

(d) Failed to comply with applicable federal, state, and local laws and regulations relating to medical gas; or

(e) Failed to provide appropriate land, buildings, and security necessary to properly carry on the business described in his application.

Section 4. License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special limited pharmacy permit ~~for~~~~for~~ medical gases on either the ~~[]~~Application for Special Limited Pharmacy Permit ~~[]~~ Medical Gas or the ~~[]~~Application for Special Limited Pharmacy Permit – Medical Gas Renewal~~[]~~; and

(2) As appropriate, the:

(a) Initial application fee established by 201 KAR 2:050, Section 1(8); or

(b) Renewal fee established by 201 KAR 2:050, Section 1(9).

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Special Limited Pharmacy Permit – Medical Gas", March 2022~~[May 2020]~~; and

(b) "Application for Special Limited Pharmacy Permit – Medical Gas Renewal", March 2022~~[May 2020]~~.

(2) This ~~material~~~~[form]~~[material] may be ~~obtained~~~~[]~~inspected, ~~or~~~~[]~~copied, ~~or obtained, subject to applicable copyright law~~~~[]~~inspected, copied, or obtained, subject to applicable copyright law~~[]~~ at the Kentucky Board of Pharmacy, 125 Holmes Street~~[]~~

Suite 300, Frankfort, Kentucky 40601-8204, **Monday through Friday**, 8 a.m. to 4:30 p.m.~~[]~~**Monday through Friday**~~[]~~, 8 a.m. to 4:30 p.m.~~[]~~ **This material is also available on the board's Web site 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) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

BOARDS AND COMMISSIONS

Board of Embalmers and Funeral Directors (As Amended at ARRS, July 14, 2022)

201 KAR 15:050. Apprenticeship and supervision requirements.

RELATES TO: KRS 316.030

STATUTORY AUTHORITY: KRS 316.030, 316.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.210(1) authorizes the Kentucky Board of Embalmers and Funeral Directors to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 316. KRS 316.030(4)(e) and (5)(d) require an applicant for an embalmer's license or a funeral director's license to serve an apprenticeship under the supervision of a Kentucky-licensed embalmer or funeral director. KRS 316.030(9) requires an applicant to file sworn statements semiannually during the apprenticeship. This administrative regulation establishes the requirements for apprentices and their supervisors, the time for filing the sworn statements, and the additional information required in the sworn statements.

Section 1. Apprenticeship Application. (1) Prior to beginning an apprenticeship, an applicant shall:

(a) File an Apprenticeship Application Form with the board that includes the sworn statement required by KRS 316.030(7)(c);

(b) Pay the registration fee established in KRS 316.030(7)(b);

(c) Submit a current photograph;

(d) Submit a copy of the applicant's high school transcript or diploma, or high school equivalency diploma;

(e) Submit an official copy of any college transcripts;

(f) Submit an official copy of National Board scores, if available;~~[]~~ and

(g) Submit an official copy of a current (less than ninety (90) days prior to the application) criminal justice information system (CJIS) report obtained from the Federal Bureau of Investigation (FBI); and

(h) Appear before the board with the supervisor at the time and place identified by the board.

(2) The apprenticeship shall begin the day the applicant and supervisor meet with the board.

Section 2. Supervisor Responsibilities. (1) An apprenticeship shall be served under the board-approved supervisor identified on the Apprenticeship Registration Form as the supervisor of record.

(2) Apprenticeships for both embalming and for funeral directing may be served concurrently under:

(a) A single individual acting as the supervisor of record who holds both a funeral director's license and an embalmer's license; or

(b) Two (2) individual licensees acting as the supervisor of record who together hold both a funeral director's license and an embalmer's license.

(3) Licensed embalmers and licensed funeral directors who seek approval from the board as a supervisor of record shall:

(a) Embalm or direct funerals at, and be employed by, the establishment where the apprentice is registered or at another funeral establishment if approved by the board;

(b) Appear before the board for approval with the apprentice; and

(c) Be responsible for ensuring that the apprentice complies with KRS Chapter 316 and 201 KAR Chapter 15.

(4) The board may withdraw approval of a supervisor based upon:

(a) Evidence of the inability to supervise an apprentice properly; or

(b) A violation of KRS Chapter 316 or 201 KAR Chapter 15.

(5) Apprentices may receive supervision by licensees other than the supervisor of record.

(a) Registered embalmer apprentices may be supervised by other licensed embalmers designated by the supervisor of record.

(b) Registered apprentice funeral directors may be supervised by other licensed funeral directors designated by the supervisor of record.

(c) Supervisors of record that designate other licensees to provide supervision for an apprentice shall remain responsible for the actions of the apprentice and for the quality of the designated supervision.

(d) The apprentice shall prepare an Apprentice Travel Form and maintain it with the apprentice calendar.

(6) The supervisor shall instruct an apprentice and ensure that an apprentice receives experience in all aspects of funeral directing or embalming, as applicable to the individual's apprenticeship.

(a) The instruction shall include:

1. The laws relating to the profession, including KRS Chapter 316 and 201 KAR Chapter 15; and

2. The theory and application of funeral directing or embalming.

(b) The training and work assignments for apprentice embalmers shall cover the following service items:

1. Initial call details;

2. Removals;

3. Embalming;

4. Restorative art treatment;

5. Posing body and features;

6. Bathing and cosmetizing of bodies;

7. Dressing and casketing of bodies;

8. Recordkeeping;

9. Purchasing of necessary supplies;

10. Preparation of autopsied bodies;

11. Care and maintenance of equipment and embalming room; and

12. Professional responsibility.

(c) The training and work assignments for apprentice funeral directors shall cover the following service items:

1. Initial call details;

2. Removals;

3. Counseling of families on the types of services and merchandise available;

4. Arrangements of funeral services and merchandise;

5. Preparing death certificates and documents;

6. Preparing applications for certain death benefits, such as Social Security, Veterans Administration, insurance companies, and lodges;

7. Preparing newspaper notices;

8. Conducting visitations or memorial services;

9. Directing funerals and graveside services;

10. Follow-up service to the family after the funeral service has been completed;

11. Recordkeeping;

12. Purchasing of necessary supplies;

13. Caring for equipment and premises; and

14. Professional responsibility.

Section 3. Supervision of Apprentices. (1) Supervision of embalmer apprentices.

(a) For the first twenty-five (25) cases with which an embalmer apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall be present with the apprentice and provide direct supervision of all of the apprentice's embalming activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform embalming services if the supervisor or the supervisor's designee is available for consultation and supervision, in accordance with KRS 316.010(14).

(c) The supervisor shall notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to embalm without direct supervision. The embalmer Level II registration fee required by 201 KAR 15:030 shall be submitted with the Level II Apprentice Registration Form. The Level II apprenticeship shall commence upon receipt of a Level II apprentice card issued by the board. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(14) and 316.030(4)(e), for the duration of the apprenticeship.

(d) A Level II apprenticeship may continue for a period of up to three (3) years while the apprentice completes the apprenticeship requirements and takes the licensure examination.

(e) An apprentice should take the first examination for licensure within sixty (60) days of completion of all other apprenticeship requirements.

(f) For any apprenticeship violation of the rules of the apprenticeship, or other rules applicable to the professions of embalming or funeral directing, the board may extend the period of apprenticeship as part of disciplinary action.

(g) The board may grant extensions of any apprenticeship upon application for an extension by an apprentice and demonstration by the apprentice of good cause or extenuating circumstances upon which an extension should be granted.

(2) Supervision of funeral director apprentices.

(a) For the first twenty-five (25) cases with which a funeral director apprentice assists and throughout the first six (6) months of training, the supervisor or the supervisor's designee shall provide direct supervision during all of an apprentice's funeral directing activities.

(b) After the apprentice has completed both twenty-five (25) cases and six (6) months of the apprenticeship, the apprentice may perform funeral directing services if the supervisor or the supervisor's designee is available for consultation and supervision, in accordance with KRS 316.010(14).

(c) The supervisor shall notify the board in writing on the Level II Apprentice Registration Form that the apprentice has completed the required twenty-five (25) cases before allowing the apprentice to practice funeral directing without direct supervision. The funeral director Level II registration fee required by 201 KAR 15:030 shall be submitted with the Level II Apprentice Registration Form. The Level II apprenticeship shall commence upon receipt of a Level II apprentice card issued by the board. The supervisor or the supervisor's designee shall continue to supervise the apprentice, in accordance with KRS 316.010(14) and 316.030(4)(f), for the duration of the apprenticeship.

(d) A Level II apprenticeship may continue for a period of up to three (3) years while the apprentice completes the apprenticeship requirements and takes the licensure examination.

(e) An apprentice should take the first examination for licensure within sixty (60) days of completion of all other apprenticeship requirements.

(f) For any apprenticeship violation of the rules of the apprenticeship, or other rules applicable to the professions of embalming or funeral directing, the board may extend the period of apprenticeship as part of disciplinary action.

(g) The board may grant extensions of any apprenticeship upon application for an extension by an apprentice and demonstration by the apprentice of good cause or extenuating circumstances upon which an extension should be granted.

(3) Removals.

(a) The supervisor or the supervisor's designee shall be present and provide direct supervision during the removal of bodies for the first six (6) months of the apprenticeship and the first twenty-five (25) removals assisted in by the apprentice.

(b) After an apprentice has served six (6) months of apprenticeship and assisted with twenty-five (25) removals, an apprentice may make removals without the direct supervision of the supervisor or the supervisor's designee if the supervisor has determined that the apprentice is competent to perform removals without direct supervision.

(c) The supervisor shall notify the board in writing on the Level

II Apprenticeship Registration Form that the apprentice has completed the required twenty-five (25) removals and that the supervisor's approval has been given for the apprentice to make removals without direct supervision before the apprentice may begin making these removals.

(d) ~~An~~~~No~~ individual who obtains or holds a permit from this board to transport dead human bodies ~~shall not~~~~may~~ use transport removals performed under that permit to accumulate the number of removals required to complete an apprenticeship. All apprenticeship removals shall be performed within the requirements of the apprenticeship and supervision. Hours accumulated performing removals under a Transport Permit shall not count toward an apprentice's average weekly work hours requirement.

(4) Calendar.

(a) The apprentice shall maintain a calendar at the registered location of the apprenticeship ~~that includes~~~~of~~ the apprentice's work schedule documenting an average of~~the~~ forty (40) regular hours per week that he or she has worked. The calendar shall be reviewed and signed on a daily basis by the supervisor to indicate that the supervisor has reviewed and approved the apprentice's work. The calendar shall be available for inspection by the state inspector during any inspection of the establishment. The calendar shall be maintained by an apprentice until ~~[such time as]~~ the apprentice passes the required examinations and becomes licensed.

(b) The calendar shall identify:

1. The daily work schedule of the apprentice, including beginning and ending times; and

2. The days on which the apprentice does not work.

(5) An apprentice may work at the funeral establishment more hours per week than required by subsection (4) of this section. An apprentice may also attend mortuary school classes or complete mortuary school classwork while serving an apprenticeship, but shall ~~[nonetheless]~~ still work an average of~~the required~~ forty (40) hours ~~per~~~~hour~~ week under the apprenticeship.

(6) If an apprentice's supervisor of record is replaced during the apprenticeship period, a Change of Supervisor form shall be completed and submitted within thirty (30) days following the change.

Section 4. Terminating and Reestablishing an Apprenticeship.

(1) Within five (5) days of the termination of an apprenticeship, the supervisor of record and the apprentice shall notify the board in writing of the termination, including the date on which the apprenticeship ceased.

(2) An apprentice funeral director or embalmer whose apprenticeship is terminated at the establishment originally identified to the board shall, within thirty (30) days of being employed by another funeral director or embalmer:

(a) Notify the board in writing of the change in employment and apprenticeship by completing and submitting a Change of Supervisor form;

(b) Identify the name, street address, and license number of the funeral director or embalmer under which the apprentice is continuing the apprenticeship; and

(c) Complete a new registration as set out in Section 2 of this administrative regulation that is signed by the licensed funeral director or embalmer who is to be the apprentice's new supervisor of record.

(3) An apprentice funeral director or embalmer who is unable to perform the duties of the apprenticeship for a period of two (2) weeks or more because of:

(a) The birth of a child and to care for the newborn child within one (1) year of birth;

(b) The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one (1) year of placement;

(c) To care for the employee's spouse, child, or parent who has a serious health condition;

(d) A serious health condition that makes the employee unable to perform the essential functions of his or her job; or

(e) Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty shall immediately notify the board of:

1. The date on which the apprentice became unable to perform the duties; and

2. The date on which the apprenticeship will be recommenced, not to exceed six (6) months following the commencement of the leave from apprenticeship.

(4) An apprenticeship shall not end later than the administration of the second examination for which the apprentice is eligible.

(5) At any time an apprenticeship ceases, or becomes inactive under these administrative regulations, an apprentice ~~shall~~~~does~~ not lose credit for the time served in ~~the~~~~an~~ apprenticeship. ~~An~~~~Any~~ ~~such~~ apprentice whose apprenticeship has ceased or become inactive may be reinstated to apprenticeship by notice to the board including the name of the apprentice's supervisor upon his or her return to active apprenticeship, the establishment at which the apprentice is employed, and payment of a processing fee ~~[of fifty (50) dollars]~~as established in 201 KAR 15:030. The reinstated apprentice shall be responsible for compliance with all other apprenticeship requirements from the date of reinstatement forward.

Section 5. Sworn Statements. (1) An apprentice shall file the Apprenticeship Sworn Statement required by KRS 316.030(7) on or before May 1 and November 1 of each year relating to the six (6) month period ending with the preceding middle of April or middle of October, respectively.

(2) The Apprenticeship Sworn Statement shall include:

(a) The names and dates of funerals in which the apprentice for a funeral director's license assisted in managing during each six (6) month period;

(b) The names and dates of embalming cases in which the apprentice for an embalmer's license assisted during each six (6) month period; and

(c) The names of the service items set forth in Section 3(6) of this administrative regulation specifically identified for each case in which the apprentice assisted during each six (6) month period.

(3) With the initial sworn statement, an apprentice shall file a report written by the applicant summarizing the requirements of KRS Chapter 316 and 201 KAR Chapter 15.

(4) With subsequent sworn statements, an apprentice shall file a report written by the applicant on an article or a book related to embalming or funeral directing read by the applicant during the six (6) month period. It shall contain a reference that includes the author, title, month and year of publication, and page numbers.

(5) The reports required by subsections (3) and (4) of this section shall be two (2) pages at a minimum and typed.

(6) An apprentice in mortuary school shall be exempt from the book report requirements of subsections (3) through (5) of this section if the apprentice submits the number of hours he or she is enrolled on the Apprenticeship Sworn Statements.

(7)(a) The supervisor of record shall sign the sworn statements and certify that the apprentice has completed the cases and service items identified in the statement.

(b) If the apprentice has received supervision from a supervisor's designee, the supervisor of record shall still be responsible for:

1. The activities of the apprentice;

2. Signing the sworn statement; and

3. The certification of completion of cases and service items identified in the statement.

(8) Before the activities of the apprentice can count toward the requirements of KRS 316.030(4)(f) or (5)(e), the case shall include the following service items:

(a) For an embalming case, the apprentice shall have participated in the service items listed in Section 4(6)(b)3 through 7 of this administrative regulation; and

(b) For a funeral directing case, the apprentice shall have participated in the service items listed in Section 4(6)(c)3 through 9 of this administrative regulation.

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

(a) "Apprenticeship Application", 7/2022~~9/2019~~;

(b) "Change of Apprentice Supervisor", 9/2019;

(c) "Apprenticeship Sworn Statement", 9/2019;

- (d) "Level II Apprentice Application", 9/2019; and
- (e) "Apprentice Travel Form", 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Rd, Ste 4, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Kanetha Dorsey, Executive Director of Kentucky Board of Embalmers and Funeral Directors, 9114 Leesgate Road, Suite 4, Louisville, Kentucky 40222, phone 502-426-4589, fax 502-426-4117, email Kanetha.dorsey@ky.gov.

BOARDS AND COMMISSIONS
Board of Nursing
(As Amended at ARRS, July 14, 2022)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 314.041, 314.051(3), (6), 314.103, 314.109, 314.475

STATUTORY AUTHORITY: KRS 314.041(2), 314.051(3), 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program.

(1) To be eligible for licensure by examination, an applicant shall:

- (a) Submit:
 - 1. A properly executed application for licensure, as required by and incorporated by reference in 201 KAR 20:370, Section 1(1);
 - 2. The licensure application fee as established in 201 KAR 20:240;
 - 3. A criminal record check completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card, and including payment of any required fee to the KSP and the FBI;
 - 4. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);
 - 5. A letter of explanation that addresses each conviction, if applicable;
 - 6. A certified copy of any disciplinary action taken on any professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on any professional or business license in another jurisdiction; and
 - 7. Evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications;

(b) Notify the board as soon as a new address is established after submitting the application;

(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(d) While taking the examination, abide by and cooperate with security procedures adopted by the board; and

(e) Apply to take and pass the National Council Licensure Examination.

(2) An application for licensure shall be valid for a period of one

(1) year from the date the application is filed with the board office or until the board receives the results of the examination.

(3)(a) Except as provided in paragraph (b) of this subsection, the name of the applicant shall appear on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates.

(b) If the name does not appear on the list, the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements.

(c) The Certified List of Out-of-state Program of Nursing Graduates shall be submitted by the nurse administrator of the out-of-state program of nursing.

(4)(a) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(b) The applicant shall complete the applicable~~one and one-half (1.5) contact hour~~ continuing education courses~~course on pediatric abusive head trauma within three (3) years of licensure~~ as required by 201 KAR 20:215, Section 5.

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (1)(a)3 of this section and any conviction is addressed by the board.

(6) A graduate of a school of nursing in Puerto Rico after September 1, 2006, in addition to the other requirements of this section, shall provide evidence of evaluation of the graduate's transcript by the Commission on Graduates of Foreign Nursing Schools or a credential evaluation organization that is a member of the National Association of Credentialing Evaluation Services. The evaluation shall indicate that the school of nursing is substantially equivalent to a school of nursing in this state.

Section 2. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.

(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:

- (1) The candidate;
- (2) Other state boards of nursing;
- (3) The National Council of State Boards of Nursing, Inc.;
- (4) The candidate's program of nursing; and
- (5) An individual or agency who submits an applicant's or licensee's written authorization for their release, if applicable.

Section 4. Provisional License. (1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.

(b) In this~~the~~ case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480~~, Section 1(1) and (4),~~ are met.

(3) To qualify as direct supervision pursuant to KRS 314.041(5) and KRS 314.051(6), the nurse responsible for the applicant shall be physically present in the facility and immediately available to the applicant during work hours while the applicant holds a provisional license.

(4) The nurse responsible for the applicant shall be currently licensed or privileged to practice pursuant to KRS 314.475 as a nurse in Kentucky.

(5) Upon notification to the board that the applicant has failed the NCLEX examination after two (2) attempts, the provisional license shall be voided.

(6) A provisional license shall be valid for a period not to exceed six (6) months.

Section 5. (1) An applicant not from a party state under the

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Nurse Licensure Compact who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

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

(a) "Certified List of Kentucky Program of Nursing Graduates", 6/10, Kentucky Board of Nursing; and

(b) "Certified List of Out-of-State Program of Nursing Graduates", 6/10, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the agency's Web site at <https://kbn.ky.gov>.**

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 (As Amended at ARRS, July 14, 2022)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 61.874(3), 314.027(2), 314.041 ~~(11)(8)~~, ~~(13)(10)(c)~~, 314.042(3), (6), 314.051(2), ~~(13)(10)(c)~~, 314.071(1), (2), 314.073(7), 314.075(1), 314.101(4), 314.142(1)(b), 314.161, 314.171(4)

STATUTORY AUTHORITY: KRS 314.041 ~~(11)(8)~~, ~~(13)(10)(c)~~, 314.042(3), (6), 314.051(2), ~~(13)(10)(c)~~, 314.071(1), (2), 314.073(7), 314.131(1), 314.142(1)(b), 314.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 314. KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314. KRS 314.041 ~~(11)(8)~~, ~~(13)(10)(c)~~, 314.042(3), (6), 314.051(2), ~~(13)(10)(c)~~, 314.071(1), (2), and 314.073(7) require the board to establish fees for licensure, examination, renewal, reinstatement, and continuing education. This administrative regulation establishes those fees.

Section 1. Fees for Licensure Applications. (1) The board shall collect a fee for:

- (a) An application for licensure; and
- (b) Licensure renewal or reinstatement.
- (2) The fee for an application shall be:
 - (a) Licensure by endorsement as a registered nurse - \$165;
 - (b) Licensure by endorsement as a licensed practical nurse - \$165;
 - (c) Licensure by examination as a registered nurse - \$125;
 - (d) Licensure by examination as a licensed practical nurse - \$125;
 - (e) Renewal of license - fifty-five (55) dollars;
 - (f) Retired status - twenty-five (25) dollars;
 - (g) Reinstatement of license - \$135;
 - (h) Paper copy of an application - forty (40) dollars;
 - (i) Full verification of licensure, credential or registration history - fifty (50) dollars;
 - (j) Licensure as an advanced practice registered nurse - \$165;
 - (k) Renewal of licensure as an advanced practice registered nurse - fifty-five (55) dollars;
 - (l) Reinstatement of licensure as an advanced practice registered nurse - \$135;
 - (m) Name change - twenty-five (25) dollars;
 - (n) Application to establish a registered nurse or licensed

practical nurse prelicensure program of nursing pursuant to 201 KAR 20:280 - \$2,000;

(o) Information submitted to establish an advanced practice registered nurse program pursuant to 201 KAR 20:062 - \$2,000; or

(p) Information submitted to establish an additional track pursuant to 201 KAR 20:062 - \$500.

(3) An application or information submitted under this section shall not be evaluated by the board unless the current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application for approval of a provider of continuing education or for a renewal or reinstatement of the approval shall be:

- (1) Initial provider approval - \$400;
- (2) Reinstatement of provider approval - \$400;
- (3) Renewal of approval - \$100; or
- (4) Individual review of continuing education offerings - ten (10) dollars.

Section 3. Fees for Services. (1) The fee for a service shall be:

(a) Validation of the current status of a temporary work permit, provisional license, license, or credential:

1. If requested in writing in individual nurse format - fifty (50) dollars; or

2. If requested in writing in list format - fifty (50) dollars for the first name and twenty (20) dollars for each additional name;

(b) Copy of an examination result or transcript - twenty-five (25) dollars;

(c) Nursing certificate - thirty (30) dollars; or

(d) Release of NCLEX results to another state board of nursing - seventy-five (75) dollars.

(2) An applicant for licensure who takes or retakes the licensure examination shall pay:

(a) The current examination fee required by the national council of state boards of nursing; and

(b) Application for licensure fee pursuant to Section 1 of this administrative regulation.

(3) A graduate of a foreign school of nursing shall be responsible for:

- (a) Costs incurred to submit credentials translated into English;
- (b) Immigration documents; and
- (c) Other documents needed to verify that the graduate has met Kentucky licensure requirements.

(4) A program of nursing that requires a site visit pursuant to 201 KAR 20:360, Section 5, shall pay the cost of the site visit to the board.

Section 4. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within one (1) year~~[six (6) months]~~ from the date the application form is filed with the board office;

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office;~~[- or]~~

(3) For an application for reinstatement of license, within one (1) year from the date the application form is filed with the board office;
or

(4) For all other applications, except for renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 5. An applicant who meets all requirements for approval, licensure, or credential shall be issued the appropriate approval, license, or credential without additional fee.

Section 6. Fees for Sexual Assault Nurse Examiners.

(1) The application fee shall be \$120.

(2) The credential renewal fee shall be fifty (50) dollars.

(3) The credential reinstatement fee shall be \$120.

Section 7. A payment for an application fee that is in an incorrect

amount shall be returned and the application shall not be posted until the correct fee is received.

Section 8. Bad Transaction Fee. Any transaction, including paper or electronic, submitted to the board for payment of a fee which is returned for nonpayment shall be assessed a bad transaction fee of thirty-five (35) dollars.

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**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, July 14, 2022)**

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

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990
STATUTORY AUTHORITY: KRS 150.025(1), 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) requires the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits may be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions.

- (1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.
- (2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.
- (3) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.
- (4) "Bait":
 - (a) Means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could lure, entice, or attract wildlife; and
 - (b) Does not mean the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.
- (5) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.
- (6) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.
- (7) "Elk" means *Cervus canadensis nelsoni*.
- (8) "Elk Restoration Permit" or "ERP" means an elk permit given to a landowner or lessee who allows the department to capture elk on the landowner or lessee's property for restoration or restocking purposes.
- (9) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

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

(11) "Loyalty Redraw" means a secondary drawing to award any unpurchased elk quota hunt permits, remaining after the purchase deadline for those individuals initially drawn for the elk quota hunt, to members of the longest-applying year-cohort of resident elk hunt drawing applicants.

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

(13) [(42)] "Out-of-zone" means all counties not included in the restoration zone.

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

(15) [(44)] "Shed" means an antler that has naturally been cast off the skull as a part of the annual growth and replacement process.

(16) [(45)] "Unit" means a designated area in the restoration zone with specific management restrictions.

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

(18) [(47)] "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

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

- (1) Attach a department-issued destruction tag to an elk prior to moving the carcass; and
- (2) Not remove the destruction tag until the carcass is processed.

Section 3. Elk Quota Hunts.

(1) The elk quota hunt application period shall be August 1 of the year preceding a given calendar year's elk hunt season [January 4] to April 30 of the year of that season.

(2) An applicant shall:

- (a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and
- (b) Pay a nonrefundable application fee of ten (10) dollars.
- (3) The commissioner shall extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.
- (4) There shall be a random electronic drawing from each applicant pool.

(5) Youths may enter a separate drawing pool for either-sex elk permits that shall be valid for use during all elk seasons, pursuant to Section 9[7(4)] of this administrative regulation.

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

(7) An applicant for the youth-only elk quota hunt may also apply for a regular quota hunt, as established in subsection (12) of this section.

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

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

(10) Nonresidents shall not comprise more than ten (10) percent of all drawn applicants in each quota hunt pool, except that the Loyalty Redraw shall exclude nonresidents.

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

(12) In addition to the youth-only quota hunt, there shall be three (3) separate regular elk quota hunts consisting of:

- (a) Antlered firearms;
- (b) Antlerless firearms; and

- (c) Either-sex archery and crossbow.
- (13) An applicant shall:
 - (a) Apply only once for an individual elk quota hunt;
 - (b) Not be eligible to be drawn in more than one (1) of the three (3) quota hunt pools;
 - (c) Only be selected by a random electronic drawing; ~~and~~
 - (d) Pay a nonrefundable application fee of ten (10) dollars for each entry; ~~and~~
 - (e) If selected, be eligible to purchase a quota elk hunt permit for the applicable season and hunt type until midnight (eastern) on June 15 of the hunt year.
- (14) A person who is drawn for an elk quota hunt, including Loyalty Redraw applicants who purchase elk quota hunt permits offered to them through the Loyalty Redraw secondary drawing, shall be ineligible to be drawn for any elk quota hunt for the following three (3) years.
- (15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at (800)858-1549 for assistance in applying.

Section 4. Loyalty Redraw.

- (1) Annually, if there are unpurchased elk hunt permits remaining after the purchase deadline for those initially drawn for the elk quota hunt, a Loyalty Redraw shall be held.
- (2) The Loyalty Redraw shall consist of a secondary random electronic drawing to award elk quota hunt permits not purchased before midnight (eastern) on June 15 of the hunt year, and shall be conducted before the Elk Hunting Unit drawing.
- (3) The Loyalty Redraw shall be limited to resident applicants from the three (3) elk quota hunt pools, plus the youth-only quota hunt pool who have applied for at least one (1) elk quota hunt permit for the most consecutive years including the current year, without ever being drawn for at least one (1) elk quota hunt permit.
- (4) Resident applicants who are eligible for the Loyalty Redraw shall be automatically entered into the secondary drawing elk quota hunt pools for which they applied in the current hunt year.
- (5) This secondary drawing procedure shall mirror the primary electronic random drawing for quota elk hunt permits, except that nonresident applicants shall be excluded.
- (6) A Loyalty Redraw applicant who is drawn for an available leftover permit may purchase the appropriate quota elk hunt permit until midnight (eastern) on June 30.
- (7) A Loyalty Redraw permit holder who does not apply for the Elk Hunting Unit drawing by midnight (eastern) on June 30 of the hunt year shall be automatically entered into the unit drawing for random assignment to an Elk Hunting Unit.
- (8) An applicant who is eligible for the Loyalty Redraw in a given year and is drawn for quota elk hunt permit in the secondary drawing, and who does not purchase the elk quota hunt permit for which he or she is drawn in that year, shall be:
 - (a) Ineligible for the Loyalty Redraw until he or she accumulates the required number of consecutive years of applications necessary to again qualify for the Loyalty Redraw; and
 - (b) Eligible to apply for the next year's elk quota hunts without waiting three (3) years.

Section 5. Landowner Cooperator Permits.

- (1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:
 - (a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;
 - (b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or
 - (c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access agreement for the duration of the agreement.
- (2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 8[7] and 9[8] of this administrative regulation.

- (3) A landowner cooperator permit shall only be used on the land that is established in the agreement, except that it may be used on adjacent property if:
 - (a) The adjacent property is owned by a different landowner; and
 - (b) The adjacent landowner has granted permission to the permit holder.
- (4) A landowner cooperator permit may be transferred to any person eligible to hunt in Kentucky, but prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:
 - (a) Name;
 - (b) Fish and Wildlife customer identification number;
 - (c) Address; and
 - (d) Telephone number.
- (5) The landowner cooperator permit shall not be transferable if it was already used for the harvest of an elk.
- (6) Public access agreements with the department shall be recorded in writing.

Section 6. ~~Section 5.~~ Voucher Cooperator Permits.

- (1) A voucher cooperator shall accrue one (1) voucher point for each legally harvested elk.
- (2) A voucher cooperator who accrues ten (10) total points on land enrolled pursuant to Section 1(17) of this administrative regulation shall receive one (1) either-sex elk permit from the department.
- (3) A recipient of a voucher cooperator elk permit shall comply with all ~~of~~ the requirements established in Sections 8[7] and 9[8] of this administrative regulation.
- (4) A voucher cooperator elk permit shall only be used on:
 - (a) The property enrolled with the department per agreement; or
 - (b) Other property that the landowner or lessee owns or leases.
- (5) A voucher cooperator permit may be transferable to any person eligible to hunt in Kentucky.
- (6) If a voucher cooperator permit is to be transferred, then the landowner, lessee, or person who has received the transferred permit shall provide to the department by August 15 the hunter's:
 - (a) Name;
 - (b) Fish and Wildlife customer identification number;
 - (c) Address; and
 - (d) Telephone number.
- (7) A permit shall not be transferable after being used for the harvest of an elk.

Section 7. ~~Section 6.~~ Elk Restoration Permits.

- (1) A landowner or lessee who allows the department to capture elk on the landowner or lessee's property shall accrue one (1) point for each captured elk.
- (2) A landowner or lessee who accrues ten (10) total points shall receive one (1) either-sex elk permit from the department that shall only be used the following hunting season.
- (3) A recipient of an ERP shall comply with all the requirements established in Sections 8[7] and 9[8] of this administrative regulation.
- (4) An ERP shall only be used on property that the ERP recipient owns or leases.
- (5) An ERP recipient may transfer the permit to any person eligible to hunt in Kentucky.
- (6) If an ERP recipient transfers an ERP to another hunter, then the ERP recipient shall provide to the department by August 15 the hunter's:
 - (a) Name;
 - (b) Address;
 - (c) Telephone number; and
 - (d) Fish and Wildlife customer identification number.
- (7) An ERP shall be invalid if it has already been used to harvest an elk.

Section 8. ~~Section 7.~~ Hunter Requirements.

- (1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.
- (2) The statewide bag limit shall be one (1) elk per hunter per license year.

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- (3) If a legal elk hunter kills any elk[-]:
- (a) The person shall immediately cease hunting elk for the remainder of the elk season; and
- (b) The elk permit held by that individual shall immediately become invalid.
- (4) A drawn applicant[hunter] may apply to hunt in up to five (5) units. ~~The drawn applicant shall complete~~by completing the application process on the department's Web site at fw.ky.gov.
- (a) Up to three (3) drawn applicants[hunters] may apply for their unit choices as a party.
- (b) If the party is drawn for a unit, then all hunters in the party shall be assigned to that same unit.
- (c) If the number of slots remaining in the quota is less than the number of hunters in the next party selected, the entire party shall be assigned to the party's next choice ranking or be assigned to a unit by the department.
- (5) A drawn applicant[hunter] who does not apply for a unit shall be assigned to a unit by the department.
- (6) An applicant[A hunter] drawn for a unit may hunt only in the assigned unit, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.
- (7) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.
- (8) An elk hunter shall not:
- (a) Take elk except during daylight hours;
- (b) Use dogs, except to recover wounded elk using leashed tracking dogs;
- (c) Hunt over bait inside the elk restoration zone;
- (d) Drive elk from outside the assigned area;
- (e) Take an elk while it is swimming;
- (f) Use electronic calls or electronic decoys; or
- (g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.
- (9) A person shall:
- (a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and
- (b) Display the vehicle tag in the windshield of the vehicle while hunting elk.
- (10) A youth shall be accompanied by an adult who shall remain in a position to take immediate control of the youth's firearm.
- (11) An adult accompanying a youth shall not be required to possess a hunting license or elk permit if the adult is not hunting.
- (12) A person shall only use the equipment and ammunition established in paragraphs (a) through (e) of this subsection to take an elk:
- (a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider, either fixed or upon expansion;
- (b) A firearm:
1. With an action that fires a single round of ammunition upon each manipulation of the trigger;
 2. Of .270 caliber or larger; and
 3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;
- (c) A muzzleloader of .50 caliber or larger;
- (d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or
- (e) A handgun loaded with:
1. Centerfire cartridges;
 2. Bullets of .270 caliber or larger designed to expand upon impact; and
 3. Cartridges with a case length of 1.285 inches or larger.
- (13) A crossbow shall contain a working safety device.
- (14) An elk hunter shall not use a magazine capable of holding more than ten (10) rounds.
- (15) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.
- (16) A hunter drawn for a firearms elk permit shall hunt elk pursuant to that permit only during the five (5) day period assigned during the initial drawing.

(17) An individual who receives or is transferred a landowner cooperator permit, a voucher cooperator permit, an elk restoration permit, or a special commission permit may hunt in all of the quota hunts and shall hunt in accordance with the seasons, limits, and equipment established in Section 8[7] of this administrative regulation.

(18)

(a) A person who is drawn for an elk quota hunt permit or was issued a landowner cooperator permit, a special commission permit, an elk restoration permit, or voucher cooperator permit shall complete and submit a post-season elk hunting survey on the department's Web site at fw.ky.gov no later than the last day of February.

(b) A person who fails to comply with the requirements established in paragraph (a) of this subsection shall be ineligible to apply for any quota hunt or no-hunt option the following year.

Section 9.~~[Section 8.]~~ Elk Quota Hunt Seasons and Limits.

(1) A person drawn for an either-sex archery and crossbow permit shall use archery or crossbow equipment to take either-sex elk from the:

(a) Second Saturday in September through the fourth Friday in September; and

(b) First Saturday in December through the second Friday in December.

(2) A person drawn for an antlered firearms permit shall use any legal equipment as established in Section 8[7](12) of this administrative regulation to take an antlered elk during one (1) of two (2) five (5) day periods randomly assigned by the department from the:

(a) Last Saturday in September for five (5) consecutive days; or

(b) First Saturday in October for five (5) consecutive days.

(3) A person drawn for an antlerless firearms permit shall use any legal equipment as established in Section 8[7](12) of this administrative regulation to take an antlerless elk during one (1) of two (2) five (5) day periods randomly assigned by the department from the:

(a) Last Saturday in November for five (5) consecutive days; or

(b) Last Saturday in December for five (5) consecutive days.

Section 10.~~[Section 9.]~~ Unit Boundaries and Elk Viewing Areas.

(1) Hunting unit boundaries and the boundaries of the Appalachian Wildlife Center Viewing Area are incorporated by reference.

(2) Elk viewing areas shall be closed to all elk hunting.

Section 11.~~[Section 10.]~~ Tagging and Checking Requirements.

(1) Immediately after taking an elk, a hunter shall record on a hunter's log:

(a) The species harvested;

(b) The sex of the animal;

(c) Date of harvest; and

(d) County of harvest.

(2) A hunter shall check a harvested elk before midnight on the day the elk is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(3) A hunter who has checked in an elk shall record the confirmation number on a hunter's log.

(4) If the hide or head is removed from the carcass before the elk is checked in, then the hunter shall be required to demonstrate proof of the sex of the elk.

(a) For antlered elk the hunter shall retain the:

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless elk the hunter shall retain the:

1. Head;

2. Udder or vulva attached to the carcass; or

3. Testicles, scrotum, or penis attached to the carcass.

(5) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:

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- (a) Confirmation number;
- (b) Name; and
- (c) Telephone number.
- (6) A person shall not provide false information in:
 - (a) Completing the hunter's log;
 - (b) Checking an elk; or
 - (c) Creating a carcass tag.

Section 12.~~[Section 11.]~~ Elk Hunting on Public Land.

(1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on the areas listed in paragraphs (a) through (f) of this subsection within the restoration zone pursuant to the conditions of the permit received:

- (a) Wildlife Management Areas;
- (b) Hunter Access Areas;
- (c) State forests;
- (d) Big South Fork National River and Recreation Area;
- (e) Daniel Boone National Forest; or
- (f) Jefferson National Forest.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone shall be subject to the requirements established in Section 14~~[43]~~ of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA and Fishtrap Lake WMA shall be designated as an elk viewing area and shall be closed to all elk hunting.

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 13.~~[Section 12.]~~ Out-of-zone Elk Hunting.

(1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall comply with the equipment and ammunition requirements established in Section 8~~[7]~~ of this administrative regulation.

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

- (a) A valid Kentucky hunting license; and
- (b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 11 of this administrative regulation.

Section 14.~~[Section 13.]~~ Elk Antlers.

(1) A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours.

(2) An elk shed shall be legal to possess.

Section 15.~~[Section 14.]~~ Elk Permit Deferral. A person who is the holder~~[recipient]~~ of a valid elk quota hunt permit, landowner cooperator permit, voucher cooperator permit, an ERP, or special commission permit may defer use of the permit to the following year if:

(1) ~~(a)~~ There is a death of the permit holder's:

~~1. ~~(a)~~~~ Spouse;

~~2. ~~(b)~~~~ Child; or

~~3. ~~(c)~~~~ Legal guardian, if the permit holder is under eighteen (18) years old; and

~~(b) ~~(2)~~~~ The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:

~~1. ~~(a)~~~~ A marriage certificate;

~~2. ~~(b)~~~~ A birth certificate; or

~~3. ~~(c)~~~~ An affidavit of paternity or maternity;

~~(2) ~~(i)~~ or~~

~~(3) The permit holder shall be ~~is~~ a member of one (1) of the service branches of the U.S. Armed Forces in either an active duty, reserve component, or National Guard status as of April 30 of the hunt year, and meets both of the following conditions:~~

~~(a) Is deployed or assigned to military duty outside the continental United States ~~(i)~~ or assigned to military duty to another location or duty station ~~so ~~(such)~~~~ that his or her assignment makes impracticable participation in the hunt for which the permit was drawn; and~~

~~(b) The permit holder submits to the department electronically via email or fax ~~(i)~~ or by mail, postmarked or received before midnight of the day immediately prior to the opening day of the applicable hunting season, a copy of military orders, or if unavailable, a letter from a commanding officer, documenting the permit holder's overseas deployment, overseas duty assignment, or assignment outside of Kentucky, showing that the effective date or dates ~~(date(s))~~ of the assignment include one (1) or more of the hunt dates for which the hunter holds a permit; or ~~(i)~~~~

~~(3) ~~(4)~~ A permit holder that meets criteria in (3) above may also automatically defer his or her permit for a second year if the military assignment or assignments ~~(assignment(s))~~ make impracticable participation in his or her assigned hunt during the year following his or her obtaining the permit, but in either case shall ~~(must)~~ provide to the elk program by May 1 of his or her actual hunt year, a copy of applicable military orders (or official letter) that made use of the permit impracticable for the first, or first and second, elk seasons after first obtaining the elk permit.~~

Section 16.~~[Section 15.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Elk Hunting Units" map, 2019 edition; and

(b) "Appalachian Wildlife Center Viewing Area" map, 2019 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., Eastern Time.

CONTACT PERSON: Jenny Gilbert, Department of Fish and Wildlife Resources, Administration 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, July 14, 2022)

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

RELATES TO: KRS 150.010, 150.177, 150.180, 150.411(3), 150.990, 237.110

STATUTORY AUTHORITY: KRS 150.025(1), 150.170, 150.175, 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits to be issued by the department. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. This administrative regulation establishes deer hunting seasons and zones, bag limits, legal methods of taking, and checking and recording requirements for deer hunting.

Section 1. Definitions.

(1) "Additional deer permit" means a permit that allows the holder to take up to two (2) additional deer beyond those allowed by the statewide deer permit in the following combinations:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer.

(2) "Adult" means a person who is at least eighteen (18) years of age.

(3) "Air gun" means a pneumatic gun fired by a charge of compressed air.

(4) "Antlered deer" means a male or female deer, excluding male fawns, with a visible antler protruding above the hairline.

(5) "Antlerless deer" means a male or female deer with no visible antler protruding above the hairline.

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

(7) "Arrow" means the projectile fired from a bow or crossbow.

(8) "Centerfire" means a type of gun that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

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

(10) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy found in cervids.

(11) "CWD Surveillance Zone" means an area designated as being subject to special deer hunting regulations due to a CWD positive cervid detection.

(12)[(40)] "Deer" means a member of the species *Odocoileus virginianus*.

(13)[(41)] "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(14)[(42)] "License year" means the period from March 1 through the last day of February.

(15)[(43)] "Modern gun" means an air gun, rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(16)[(44)] "Muzzle-loading gun" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(17)[(45)] "Novice deer hunter" means a person who has not harvested more than two (2) deer in Kentucky in the last ten (10) years.

(18)[(46)] "Shed" means an antler that has naturally been cast off the skull as a part of the annual growth and replacement process.

(19)[(47)] "Special deer hunt" means a one (1) or two (2) day deer hunt sponsored and overseen by the department on private land that:

(a) Allows a novice deer hunter to use a modern gun outside of modern gun deer season; and

(b) Shall be made available only to a:

1. Kentucky resident;

2. Person enrolled as a resident or non-resident student in a public or non-public postsecondary institution located in Kentucky; or

3. Member of the United States military or his or her spouse or children stationed at a military base in Kentucky.

(20)[(48)] "Statewide deer hunting requirements" means the season dates, zone descriptions, bag limits, and other requirements for deer hunting established in this administrative regulation.

(21)[(49)] "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

(a) One (1) antlered deer and no more than three (3) antlerless deer; or

(b) No more than four (4) antlerless deer.

(22)[(20)] "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(23)[(24)] "Youth deer permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

(a) One (1) antlered deer and no more than three (3) antlerless deer; or

(b) No more than four (4) antlerless deer.

(24)[(22)] "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.

Section 2. License and Deer Permit Requirements.

(1) Unless license exempt, as established in KRS 150.170, a

person shall carry a valid:

(a) Kentucky hunting license while hunting; and

(b) Deer permit while hunting.

(2) Unless license exempt, as established in KRS 150.170, a youth shall carry a valid:

(a) Kentucky youth hunting license while hunting; and

(b) Youth deer permit while hunting.

Section 3. Hunter Restrictions.

(1) A deer hunter shall not:

(a) Take a deer except during daylight hours;

(b) Use dogs, except leashed tracking dogs, to recover a wounded deer;

(c) Take a deer that is swimming;

(d) From a vehicle, boat, or on horseback, take a deer, except that a hunter with a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform; and

(e) Possess or use a decoy or call powered by electricity from any source.

(2) A person shall only use the equipment established in paragraphs (a) through (e) of this subsection to take a deer:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger; and

2. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzle-loading gun;

(d) A shotgun loaded with a shell containing single projectile ammunition designed to expand upon impact; or

(e) An air gun:

1. Of .35 caliber or larger;

2. Charged by an external tank; and

3. Loaded with single projectile ammunition designed to expand upon impact.

(3) A person shall only use a weapon that complies with the appropriate season established in Section 5 of this administrative regulation to take a deer.

(4) A crossbow shall contain a working safety device.

(5) A person shall not use a magazine capable of holding more than ten (10) rounds to take a deer.

Section 4. Hunter Orange Clothing Requirements.

(1) During the modern gun deer season, muzzle-loader season, and any youth gun season, a person hunting any species during daylight hours and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl or mourning dove.

(2) During an elk firearm season, as established in 301 KAR 2:132, a person hunting any species and any person accompanying a hunter within the elk restoration zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except while hunting waterfowl or mourning dove.

(3) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(4) A camouflage-pattern hunter orange garment worn without additional solid hunter orange on the head, back, and chest shall not meet the requirements of this section.

Section 5. Statewide Season Dates.

(1) A deer hunter may use archery equipment to hunt deer statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern gun statewide beginning the second Saturday in November for sixteen (16) consecutive days.

(3) A deer hunter may use a muzzle-loading gun to hunt deer statewide:

(a) For two (2) consecutive days beginning the third Saturday in

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October;

(b) For nine (9) consecutive days beginning the second Saturday in December; and

(c) During any season in which a modern gun may be used to take deer.

(4) A deer hunter may use a crossbow to hunt deer statewide from the third Saturday in September through the third Monday in January.

(5) A youth or a legal resident hunter sixty-five (65) years or older may hunt with a crossbow from the first Saturday in September through the third Monday in January.

(6) There shall be a youth gun season for two (2) consecutive days beginning on the second Saturday in October, in which a youth deer hunter shall comply with this administrative regulation and all other statewide deer hunting requirements.

(7) There shall be a free youth weekend for two (2) consecutive days beginning on the Saturday after Christmas during which a youth:

(a) Shall not be required to have a hunting license or deer permit; and

(b) Shall comply with this administrative regulation and all other statewide deer hunting requirements.

Section 6. Zones.

(1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Green, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McClean, McCracken, Mercer, Muhlenberg, Nelson, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Todd, Trigg, Trimble, Union, Washington, Webster, and Woodford Counties.

(2) Zone 2 shall consist of Adair, Allen, Barren, Bath, Bourbon, Boyd, Boyle, Breckinridge, Butler, Carter, Casey, Clark, Daviess, Edmonson, Fayette, Fleming, Grayson, Greenup, Hancock, Jessamine, Lawrence, Lewis, Lincoln, Logan, Madison, Marion, Meade, Metcalf, Monroe, Montgomery, Nicholas, Ohio, Taylor, and Warren Counties.

(3) Zone 3 shall consist of Cumberland, Elliott, Estill, Garrard, Johnson, Laurel, Morgan, Powell, Pulaski, Rowan, Simpson, Wayne, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Clinton, Floyd, Harlan, Jackson, Knott, Knox, Lee, Leslie, Letcher, Magoffin, Martin, McCreary, Menifee, Owsley, Perry, Pike, Rockcastle, Russell, and Whitley Counties.

Section 7. Season and Zone Limits.

(1) A person shall not take more deer than each zone allows, as established in this section.

(2) A person shall not take more than one (1) antlered deer per license year, regardless of permit type used or zone hunted, except as established in 301 KAR 2:111, 2:178, or 3:100.

(3) A person may take an unlimited number of antlerless deer in Zone 1 if the person has purchased the appropriate additional deer permits.

(4) A person may take up to a total of four (4) deer in Zone 2.

(5) In Zone 3, a person may take up to a total of four (4) deer, except that a firearm or air gun shall not be used to take a total of more than one (1) antlerless deer.

(6) In Zone 4, a person may take one antlerless deer, but only during:

(a) Archery season, except that a person shall not take an antlerless deer during modern gun season, the October muzzleloader season, or the first six (6) days of the December muzzleloader season;

(b) Crossbow season, except that a person shall not take an antlerless deer during modern gun season, the October muzzleloader season, or the first six (6) days of the December muzzleloader season;

(c) Any youth weekend; or

(d) The last three (3) days of the December muzzleloader season.

Section 8. Supervision of Youth Gun Deer Hunters.

(1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's gun.

(2) An adult accompanying a youth hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.

Section 9. Harvest Recording.

(1) Immediately after taking a deer, and prior to moving the carcass, a person shall record, in writing:

(a) The species taken;

(b) The date taken;

(c) The county where taken; and

(d) The sex of the deer taken on one (1) of the following:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;

3. A hunter's log printed from the Internet;

4. A hunter's log available from any KDSS agent; or

5. An index or similar card.

(2) The person shall retain and possess the completed hunter's log while the person is in the field during the current hunting season.

Section 10. Checking a Deer.

(1) A person shall check a harvested deer before 11:59 p.m. on the day the deer is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(2) A person who has checked in a deer shall record the confirmation number on a hunter's log.

(3) If a hunter removes the hide or head of a harvested deer before the deer is checked in, then the hunter shall retain the deer parts established in paragraphs (a) and (b) of this subsection:

(a) For antlered deer, the:

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless deer, the:

1. Head; or

2. Udder or vulva attached to the carcass.

(4) If a hunter transfers possession of a harvested deer, or if the harvested deer is out of the hunter's possession, the hunter shall attach to the carcass a hand-made tag that contains the following information:

(a) The confirmation number;

(b) The hunter's name; and

(c) The hunter's telephone number.

(5) A person shall not provide false information while:

(a) Completing the hunter's log;

(b) Checking a deer; or

(c) Creating a carcass tag.

Section 11. Transporting and Processing Deer.

(1) A person shall:

(a) Not transport an unchecked deer out of Kentucky;

(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken; or

(c) Not sell deer hides except to a licensed:

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

(2) A taxidermist or an individual who commercially butchers deer shall not accept a deer carcass or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag as established in Section 10 of this administrative regulation.

(3) An individual who commercially butchers deer shall keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in possession and retain the records for a period of one (1) year.

Section 12. Special Deer Hunt Program.

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- (1) A special deer hunt shall:
 - (a) Consist of a minimum of ten (10) novice deer hunters selected on a first-come, first-served basis;
 - (b) Take place on private land with the permission of the landowner;
 - (c) Only be overseen and sponsored by department employees; and
 - (d) Take place during the archery deer season.
- (2) A special deer hunt participant shall possess a valid hunting license and deer permit, except if the participant is license-exempt, as established in KRS 150.170.

Section 13. Antlers.

- (1) A person shall not use a device that is designed to entangle or trap the antlers of a deer.
- (2) A shed of a deer shall be legal to possess.

Section 14. CWD Surveillance Zone Requirements.

(1) A CWD Surveillance Zone shall be limited to an area surrounding the location(s) of CWD positive cervid detections as biologically and logistically necessary to monitor and combat the spread of CWD. The areas designated as part of the CWD Surveillance Zone shall be published on the department's Web site[website] at fw.ky.gov.

(2) In any area identified as a CWD Surveillance Zone, the following requirements shall be effective[will go into effect]:

(a) In addition to items in Sections 10 and 11 above a hunter[fall hunters] harvesting deer in a CWD Surveillance Zone shall:

1. Transport the entire carcass or the entire head; and
2. Telecheck confirmation number to a KDFWR authorized check station in the CWD Surveillance Zone during the identified time periods as advertised by the department at <https://fw.ky.gov>.

(b) A hunter harvesting deer in a CWD Surveillance Zone shall not:

1. Transport a full carcass or any part thereof outside of the CWD Surveillance Zone, except deboned meat, clean skull plates, antlers, antlers attached to a clean skull plate, clean skulls, clean teeth, finished taxidermy work, and hides of legally harvested cervids; or[.]

2. Bait or feed any wildlife inside the CWD Surveillance Zone, except for:

- a. Normal agricultural practices, including food plots;
- b. Hanging bird feeders within the curtilage of the home; and
- c. Furbearer trapping attractants, except grain salt or mineral.

CONTACT PERSON: Jenny Gilbert, Department of Fish and Wildlife Resources, Administration 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, July 14, 2022)

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(45), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600, 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions.

(1) "Active military personnel" means a member of the Armed Forces on active duty, including members of the National Guard and Reserves on active duty other than for training.

(2) "Adult" means a person who has reached his or her 18th birthday.

(3) "Dark geese[goose]" means [a–]Canada geese[goose], cackling geese[goose], white-fronted geese[goose], or brants.

(4)[(2)] "Light geese[Goose]" is defined by KRS 150.010(20)[means a snow goose or Ross's goose].

(5)[(3)] "Light geese conservation order[Goose Conservation Order]" is defined by KRS 150.010(21)[50 C.F.R. 21.60].

(6) "Veteran" means a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.

(7)[(4)] "Waterfowl" is defined by KRS 150.010(45).

(8) "Youth" means a person who has not reached his or her 16th birthday.

Section 2.

[(4)] Except as established in 301 KAR 2:222[.] or 2:225[–or 2:226], a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

[(2)] [Hunting zones, special hunt areas, and reporting areas are established in 301 KAR 2:224.]

Section 3. Season Dates.

(1) The duck, coot, and merganser season shall:

(a) Begin on Thanksgiving Day for four (4) consecutive days; and

(b) Be from December 7 through January 31.

(2) The dark geese[goose] season shall be from Thanksgiving Day through February 15.

(3) The light geese[light goose] season shall be from Thanksgiving Day through February 15.

(4) The light geese conservation order[Light Goose Conservation Order] season shall be from February 16 through March 31.

(5) A person shall not hunt [a] light or dark geese[goose] in:

- (a) The areas of Laurel River Lake as posted by sign; or
- (b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. Ballard Zone.

(1) The Ballard Zone includes the portion of Ballard County north and west of:

(a) The Ballard-McCracken County line to State Road 358;

(b) State Road 358 to US 60;

(c) US 60 to the city limits of Wickliffe; and

(d) The city limits Wickliffe to the center of the Mississippi River.

(2) In the Ballard Zone, [as established in 301 KAR 2:224,] a person hunting waterfowl shall:

(a) Not hunt or establish a blind within:

1. 100 yards of another blind; or
2. Fifty (50) yards of a property line; and
- (b) Not possess more than one (1) uncased or loaded shotgun while in a blind.

(3)[(2)] The requirements of subsection (1) of this section shall not apply if the Light Geese[Goose] Conservation Order, as established in Section 3 of this administrative regulation, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits.

(1) Ducks. The daily limit shall be six (6), which shall not include more than:

- (a) Four (4) mallards;
- (b) Two (2) hen mallards;
- (c) Three (3) wood ducks;
- (d) Two (2) black ducks;
- (e) Two (2) redheads;
- (f) One (1) pintail;
- (g) One (1) scaup beginning Thanksgiving Day for four (4) consecutive days and December 7 through December 17;

- (h) Two (2) scaup beginning on December 18 through January 31;
- (i) One (1) mottled duck; or
 - (j) Two (2) canvasbacks.
- (2) Coot. The daily limit shall be fifteen (15).
- (3) Merganser. The daily limit shall be five (5), which shall not include more than two (2) hooded mergansers.
- (4) Dark geese[goose]. The daily limit shall be five (5), which shall not include more than:
- (a) Three (3) Canada geese or cackling geese, in combination;
 - (b) Two (2) white-fronted geese; or
 - (c) One (1) brant.
- (5) Light geese[goose]. The daily limit shall be twenty (20), except that there shall not be a limit during the light geese conservation order[Light Goose Conservation Order] season.
- (6) The possession limit shall be triple the daily limit, except that there shall not be a light geese[goose] possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

- (1) Sunset, except as established in 301 KAR 2:222; or
- (2) One-half (1/2) hour after sunset if hunting light geese during the light geese conservation order[Light Goose Conservation Order] season.

Section 7. Falconry Waterfowl Season and Limits.

- (1) The light geese[goose] season shall be from Thanksgiving Day through February 15.
- (2) The light geese conservation order[Light Goose Conservation Order] season shall be from February 16 through March 31.
- (3) The season for all other waterfowl shall be from Thanksgiving Day through February 15.
- (4) The daily limit shall be three (3) waterfowl, except that there shall not be a limit on light geese during the light geese conservation order[Light Goose Conservation Order] season.
- (5) The possession limit shall be nine (9) waterfowl, except that there shall not be a possession limit on light geese during the light geese conservation order[Light Goose Conservation Order] season.

Section 8. Permit for the Light Geese Conservation Order Season[Light Goose Conservation Order Season].

- (1) A person hunting light geese during the light geese conservation order[Light Goose Conservation Order] season shall first obtain a free permit by completing the online Snow Geese[Goose] Conservation Order Permit process on the department's Web site at fw.ky.gov.
- (2) A person hunting light geese during the light geese conservation order[Light Goose Conservation Order] season shall submit a Snow Geese[Goose] Conservation Order Permit Survey to the department by April 10.

Section 9. ~~[A]~~ Special Youth Waterfowl Season.

- (1) A youth shall only[may] hunt waterfowl and gallinule on the Saturday before Thanksgiving and the second Saturday in February.
- (2) A youth hunter shall be accompanied by an adult;
- (3) Youth hunters shall obey the provisions of 301 KAR 2:221 and 301 KAR 2:222, except that he or she may hunt on the dates established[provided] in this administrative regulation;
- (4) An adult accompanying a youth who is waterfowl hunting shall:
 - (a) Remain in a position to take immediate control of the youth's firearm;
 - (b) Not hunt ducks, coots, mergansers, and gallinules; and
 - (c) Not be required to possess a hunting license or waterfowl permit if he or she is not hunting.

Section 10. A Special Veterans and active Military Personnel Waterfowl Hunting Season.

- (1) A veteran or active military personnel shall only[may] hunt waterfowl and gallinule on the Sunday before Thanksgiving and the second Sunday in February.
- (2) Veteran hunters shall obey the provisions of 301 KAR 2:221 and 301 KAR 2:222, except that applicable hunters shall only[may]

hunt on the dates established[provided] in this administrative regulation.

(3) While in the field during the special veterans and active military personnel waterfowl hunting season, waterfowl hunters shall either have a state hunting license showing veteran status or carry proof of their veteran or active military personnel status. Acceptable forms of proof shall be a current military identification card, a VA-issued identification card, state issued driver's license or identification card with a veteran's designation, or an original or copy of a DD Form 214, DD Form 215, NGB Form 22, NGB Form 22-a, or DD Form 256.

Section 11. ~~[Section 9.]~~ Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Snow Geese[Goose] Conservation Order Permit", April 2022[January 2014]; and
 - (b) "Snow Geese[Goose] Conservation Order Permit Survey", April 2022[January 2014].
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or online at:
 - (a) <https://app.fw.ky.gov/snowgoosesurvey/snowgoose.aspx> for the "Snow Geese Conservation Permit"; and
 - (b) <https://app.fw.ky.gov/snowgoosesurvey/snowgoosesurvey.aspx> for the "Snow Geese Conservation Order Permit Survey".

CONTACT PERSON: Jenny Gilbert, Department of Fish and Wildlife Resources, Administration Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET Department of Kentucky State Police (As Amended at ARRS, July 14, 2022)

502 KAR 10:010. Definitions.

RELATES TO: KRS 332.015[332.040]

STATUTORY AUTHORITY: KRS 15A.160, 332.216[332.100]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.216[332.100] provide that the [Secretary of the Justice Cabinet in cooperation with] the Commissioner of the Department of Kentucky State Police, Department of State Police, may adopt such administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the definitions to be utilized in the driver training schools and instructors administrative regulations.

Section 1. Definitions.~~[As employed in the driver training and instructors administrative regulations, unless the context requires otherwise the following words and phrases have the following meanings:]~~

- (1) "Commissioner" is defined by KRS 332.015(2).~~[means the Commissioner],~~ Department ~~[of State Police.]~~
- (2) "Driver training" is defined by KRS 332.015(3).
- (3) "Driver training instructor" means any person who gives driver training or offers a course of driver training for which a fee or tuition is charged.
- (4)~~[(3)]~~ "Place of business" means a designated location at which the business of the driver training school is ~~[being]~~ conducted.
- (5)~~[(4)]~~ "Branch office" means an approved location where the business of the driver's school is conducted, other than the principal place of business.
- (6)~~[(5)]~~ "High school education or the equivalent in experience" means any high school diploma or the ability to pass a General Educational Development Test.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, July 14, 2022)

502 KAR 10:020. Department facilities; facility inspection; conflict of interest.

RELATES TO: KRS ~~332.216~~[332.100]

STATUTORY AUTHORITY: KRS 15A.160, ~~332.216~~[332.100]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and ~~332.216~~[332.100] provide that the [~~Secretary of the Justice Cabinet in cooperation with the~~]Commissioner of the department[~~, Department of State Police,~~] may adopt such administrative regulations necessary to carry out the provisions of KRS Chapter 332. This [~~administrative~~]regulation establishes the department's policy regarding department premises, facility inspection, and conflict of interest.

Section 1. General Prohibitions on Premises. (1) ~~A~~[No] driver training school instructor, employee, or agent ~~shall not~~[will] be permitted to loiter in or on premises rented, leased, owned, or used by the department.

(2) ~~A~~[No] driver training school instructor, employee, or agent shall ~~not~~ be permitted to personally solicit any individual on premises rented, leased, owned, or used by the department for the purpose of enrolling them in any driver training school.

(3) Practice driving ~~shall be~~[is] prohibited on testing areas used by the department while driving tests are in progress.

Section 2. Inspections. (1) A driver training school shall permit any authorized representative of the department to inspect the school at any time.

(2) The driver training school shall make available to the department full information relating to data contained in its application forms and shall permit the department's representative to make [~~Photostat~~]copies of school records required by the department.

Section 3. ~~A~~[No] person whose duties relate in any way to the issuance of motor vehicle operator's license,~~[nor]~~ any employee of the department, ~~or~~[nor] any member of the person's or employee's[his] immediate family, shall ~~not~~ be connected in any capacity whatsoever with a driver training school.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, July 14, 2022)

502 KAR 10:035. Commercial driver's license skill testing.

RELATES TO: KRS 165A.310, 281A.160, [332.040]~~],~~ 49 C.F.R. 383.75, 49 C.F.R. 383.131

STATUTORY AUTHORITY: KRS 165A.310, 281A.150(2), (3), 281A.160~~],~~ [332.040]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.160 requires the Department of Kentucky State Police to promulgate administrative regulations to implement the provisions of the statute, which allows[authorizes] third parties to administer the skills test for commercial driver's licenses. This administrative regulation establishes procedures for authorization and testing.

Section 1. Application for Authorization. Persons desiring to administer the skills test for commercial driver's licenses shall make a written request to the Kentucky State Police Driver Testing Branch [Driver Testing Section of the Department of State Police]. The request shall be accompanied by:

(1) A copy of a current driver's training school or instructor's

license;~~],~~ and

(2) Proof of satisfactory completion of a CDL examiner's training course approved by the U.S. Department of Transportation, Federal Highway Administration (FHWA).

Section 2. Issuance of Authorization. Upon receipt of a written request from a qualified person, the Driver Testing ~~Branch~~[Section] of the Department of Kentucky State Police shall issue a letter of authorization to conduct the CDL skills test. The letter of authorization shall be considered an endorsement to the drivers training school or instructor's license and shall be subject to the same terms and conditions as school or instructor's license.

Section 3. Skills Test Requirements. Persons authorized to administer the CDL skills test shall be subject to the following additional requirements:

(1) Administration of skills tests shall comply with 49 C.F.R. 383.75, Subparts G and H.

(2) Persons administering the skills tests shall, without deviation, administer the test in accordance with the AAMVA's 2005 CDL Test System Model CDL Examiner's Manual.~~[Kentucky State Police Driver Testing Section CDL Examiner's Manual. The manual is hereby incorporated by reference. Copies of the manual may be obtained from the Driver Testing Section of the Department of State Police, 919 Versailles Road, Frankfort, Kentucky 40601.]~~

(3) Persons administering the skills tests shall, following the road test, immediately submit passing results to~~call~~ the Kentucky State Police Driver Testing Branch by email to KSPCDL-Scores@ky.gov[Driver Testing Section of the Department of State Police and report the score given to the person tested].

Section 4. Processing Fee. A processing fee of twenty-five (25) dollars shall accompany the written request to administer the skills test.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, July 14, 2022)

502 KAR 10:040. Training school facilities.

RELATES TO: KRS ~~332.204~~[332.030]

STATUTORY AUTHORITY: KRS 15A.160, ~~332.095, 332.204, 332.216~~[332.100]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 332.216 requires the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 332. KRS 15A.160 authorizes the secretary of the cabinet to adopt administrative regulations to administer the cabinet. KRS 332.202 and 332.204 require the department to establish a licensure process for driver training schools for instruction of persons in the operation of motor vehicles that are not commercial motor vehicles. This administrative regulation establishes the licensure process and standards for driver training schools. [~~KRS 15A.160 and 332.216~~]~~]~~ ~~332.100~~ [~~authorize the department to establish~~]~~]~~ provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may adopt such [~~administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding standards for driver training school facilities.~~]

Section 1. Driver Training School Standards.~~[The following standards shall apply to driver training school office facilities:]~~

(1) The driver training school shall have and maintain an established place of business in the Commonwealth of Kentucky.

(2) The established place of business of each driver training

school shall be owned or leased by the driver training school and regularly occupied and primarily used by that driver training school for the business of:

(a) Giving driving instructions for hire;

(b) ~~the business of~~ Preparing members of the public for examination given by the department for a motor vehicle operator's license.

(3) The established place of business of each driver training school shall be located in a district ~~[which is]~~ zoned for business or commercial purposes. The driver training school office shall have a permanent sign displaying the school name in letters at least six (6) inches in height and visible from the street or road on which the school is located. If the classroom is at a different address, the classroom ~~[it too]~~ shall have a permanent sign meeting the same criteria. The hours during which the driver training is conducted shall also be displayed. If these requirements do not comply with local zoning laws, the department shall permit a sign of a type that ~~[which]~~ does comply.

(4) The established place of business or advertised address of any driver training school shall not consist of or include a house trailer, residence, tent, temporary address, office space only, a room or rooms in a hotel, rooming house or apartment house, or premises occupied by a single or multiple unit dwelling house. This requirement ~~[The residence requirement of this rule]~~ shall not apply to ~~[compel the discontinuance of]~~ a driver training school that ~~[which]~~ was already established and operational on or before June 16, 1966.

(5) The place of business shall be operated by responsible personnel during stated office hours and shall be open to inspection of the premises, facilities, records and vehicles by any authorized representative of the cabinet during this time.

(6) The place of business shall have a business telephone used exclusively for the operation of the driving school.

(7) A driver training school shall employ at least one (1) driver training instructor licensed pursuant to KRS 332.204 and 502 KAR 10:030.

(8) A driver training school shall have at least one (1) motor vehicle registered in the name of the school pursuant to 502 KAR 10:070.

(9) A driver training school shall not transfer its license nor change its place of business without the prior approval of the department. A transfer of ownership shall be treated as an initial application for a driver training school license. There will be a \$200 fee for transfer of ownership, which will be treated as an original application for license.

Section 2. Driver Training School License Application. (1) A Driver Training School Application, KSP 106, shall be submitted to the Kentucky State Police Driver Testing Branch for a driver training school facility. If a school has more than one facility, it shall designate one of the facilities as the primary driver training school facility.

(2) The application fee set by KRS 332.204(2) shall be provided with the written application. The fee may be refunded if the application is denied.

(3) The application shall state:

(a) Name of the driver training school;

(b) Address of the driver training school;

(c) Telephone numbers of the driver training school;

(d) Whether the school is a sole proprietorship, corporation, or association; and

(e) Name, address, and telephone number of all owners, partners, associates, processing agents, officers; and managers.

(4) Each owner, partner, officer, and manager shall complete a Driver Training Instructor Application. The health history portion of the application shall not be required unless the applicant is applying for an instructor's license and to meet the requirements of 502 KAR 10:030.

Section 3. Driver Training School Branch Office. (1) A driver training school branch office shall meet the standards of a driver training school as required in KRS 332.204 and this administrative regulation.

(2) A Driver Training School Application shall be submitted to the Kentucky State Police Driver Testing Branch, 1250 Louisville Road, Frankfort, Kentucky 40601 for each driver training school branch office. The branch office application fee shall be one hundred (100) dollars for each branch office. Payment shall be in the form of a certified check or money order made payable to the Kentucky State Treasurer. The fee shall be provided with the written application. The fee may be refunded if the application is denied.

(3) If the application is approved, the department shall issue a copy of the license of the primary driver training school facility, appropriately endorsed, for use at the branch office. This copy shall be conspicuously displayed in the branch office at all times.

(4) A branch office or its equipment shall not be moved to a new location without prior approval of the department.

Section 4. Change in License Information.

(1) A Driver Training School License Information Notice of Change, KSP 115, shall be submitted to the Drivers Testing Branch for a primary office or a branch office within ten (10) days for:

(a) ~~(1)~~ Change of school name;

(b) ~~(2)~~ Change of address;

(c) ~~(3)~~ Change of contact information;

(d) ~~(4)~~ Addition, change, or departure of owner, partner, officer, or manager;

(e) ~~(5)~~ Closure of a school or branch office. The license shall be surrendered to the Drivers Testing Branch immediately at 1250 Louisville Road, Frankfort, Kentucky 40601;

(f) ~~(6)~~ Renewal of a driver training instructor license;

(g) ~~(7)~~ Transfer of a driver training instructor license;

(h) ~~(8)~~ Change of a driver training instructor's name or personal information on the license;

(i) ~~(9)~~ Termination of a driver training instructor;

(j) ~~(10)~~ Addition or removal of a fleet vehicle; or

(k) ~~(11)~~ Change, renewal, cancellation, or termination of fleet liability insurance.

(2) The Driver Training School License Information Notice of Change shall be submitted ten (10) days prior to cancellation or termination of insurance.

Section 5. Driver Training Motor Vehicles. A Driver Training School Fleet Information, KSP 118, shall be submitted with the application listing all motor vehicles owned, leased, registered, or insured in the name of the driver training school. All motor vehicles shall comply with the provisions of 502 KAR 10:070. The following standards shall apply to driver training school branch offices:

(1) A driver training school desiring to open a branch office shall make application on a form prescribed by the department. Upon approval ~~[If application is approved]~~, the department will issue a copy of the license of the principal place of business, appropriately endorsed, for use at the branch office. This copy shall be conspicuously displayed in such branch office at all times.

(2) A branch office or its equipment may not be moved to a new location without the prior approval of the department.

(3) If ~~[Should]~~ a branch office is ~~[be]~~ discontinued, the branch office copy of the license shall be surrendered immediately to the department.

(4) The branch office shall meet all of the requirements of the licensed principal place of business.

(5) There will be a fee of \$100 for licensure of each branch office.]

Section 6. ~~[Section 3.] Classroom Facilities.~~ The following standards shall apply to driver training school classroom facilities:]

(1) The classroom facility of each driver training school shall be reasonably near its office facility and within thirty (30) minutes normal driving time of that facility.

(2) The classroom shall contain sufficient space and equipment

to carry on the business of giving classroom instruction for students enrolled in the driver training school, and preparing students for examination for a motor vehicle operator's license.

(3) The classroom facility shall have adequate lighting, heating, ventilation, and sanitation facilities, and shall comply with all state and local laws relating to public health, safety, and sanitation.

(4) The classroom facility shall contain the following equipment and supplies:

(a) Individual desks or tables providing writing surfaces for not less than eight (8) students;

(b) ~~Adequate~~ Blackboards or whiteboards that[which] are visible from all seating areas;

(c) Adequate charts and diagrams or pictures relating to the operation of motor vehicles and traffic laws;

(d) Audio visual equipment consistent with modern technology[One (1) of the following:

1. A sixteen (16) millimeter sound movie projector and screen for showing driver training and sound films; or

2. A thirty-five (35) millimeter slide projector and slides; or

3. A video/audio display screen of not less than nineteen (19) inches diagonal measure, capable of being operated in conjunction with a video tape for showing driver training instruction]; and

(e) A copy of this administrative regulation[these rules and administrative regulations] displayed so as to be accessible to all students.

(5) ~~[In addition to the foregoing,]~~The following ~~[are]~~ suggested teaching aids may be used:

(a) A reaction time testing device;

(b) Peripheral vision testing device;

(c) Magnetic traffic boards; and

(d) ~~Other~~[Such other] devices ~~that~~[as] may help to acquaint students with traffic laws and prepare them to safely operate motor vehicles.

(6) A minimum of four (4)[five (5)] hours of classroom instruction shall be available to each student receiving driving training from a driver training school.

Section 7.~~[Section 4.]~~ Driver training schools shall make available the following~~[-both-]Theoretical and Practical Instruction.[as follows]:~~

(1) Practical instruction in driver training shall;

(a) Include the demonstration of, and actual instruction in, starting, stopping, shifting, turning, backing, parking, and steering;
and

(b) Take place in a training vehicle, that[which] meets the regulatory requirements set forth herein.

(2) Theoretical instruction in driver training shall include subject matter relating to rules of the road, safe driving practices, pedestrian safety, mechanics of motor vehicles, driver responsibility, the Kentucky point system, types of automobile insurance, and use of automobile safety devices~~[that meets the requirements set forth in 601 KAR 13:110, Section 4(a)-(d)]~~ relating to rules of the road, safe driving practices, pedestrian safety, mechanics of motor vehicles, driver responsibility, the Kentucky point system, types of automobile insurance, and use of automobile safety devices].

Section 8.~~[Section 5.]~~ Student Fees and Charges. (1) A[Each] school shall publish a schedule of fees or charges for behind-the-wheel lessons, classroom lessons, and all other fees or charges made by the school. A copy of this schedule shall be filed with the department at the address in Section 10 of this administrative regulation.

(2)

[Section 6.] A[Each] school shall inform each student, prior to the time instruction commences, of the character and amount of any ~~[and all]~~ fees or charges made for enrollment ~~[or]~~ registration, tuition, and use of any other service~~[-or]~~ equipment or materials provided by the school.

Section 9.~~[Section 7.]~~ Relocation. Prior to the relocation of a[Before any] driver training school office~~[-or]~~ branch office, or any school equipment~~[-thereof]~~, ~~[is moved to another location, -]the~~

department shall be notified and the new location shall be inspected and approved, if the school office, branch office, or equipment complies with the requirements of this administrative regulation.

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

(a) "Driver Training School Application", KSP 106, 2009 edition;

(b) "Driver Training School License Information Notice of Change", KSP 115, 2006 edition; and

(c) "Driver Training School Fleet Information", KSP-118, 2022 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Police, Drivers Testing Branch, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and at any KSP regional driver testing office. This material is also available on the agency Web site kentuckystatepolice.org under driver testing.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, July 14, 2022)

502 KAR 10:050. Contracts and agreements.

RELATES TO: KRS 332.216 [332.400]

STATUTORY AUTHORITY: KRS 15A.160, 332.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.216[332.400] provide that the department [Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police,] may adopt ~~[such]~~ administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding contracts and agreements involving driver training schools.

Section 1. Each school shall file and maintain ~~[with the department]~~ a list of ~~[those]~~ persons authorized ~~[or empowered]~~ to execute contracts on behalf of the driver's school with the department. A complete signature record form shall be filed with the department for each person authorized to sign contracts for the school.

Section 2. Each school which uses contracts or agreements shall furnish the department with blank copies of each form used.

Section 3. Any student who signs a contract or agreement with a [any] driver training school shall receive a ~~[carbon]~~ copy of the contract and the original retained and filed by the school. These contracts shall be made available to any authorized representative of the department upon request.

Section 4. All contracts used by a commercial driver training school shall contain the following:

(1) The name and address of the school. If the school is conducted under an assumed name or is operated by a corporation, partnership or association, the agreement shall contain the name of the individual owner, or the ~~[such of]~~ names of the officers of the corporation, association, or members of the partnership as the department may require.

(2) All contracts shall contain the following statement. "This constitutes the entire agreement between the school and the student and no verbal statements or promises will be recognized."

(3) The fee charged for each lesson, if fees are charged for individual lessons, or ~~[and/or]~~ the fee for the entire series of lessons agreed upon.

(4) A statement indicating that these administrative regulations of the driver training schools are available on the school premises for the examination by the student.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, July 14, 2022)

502 KAR 10:060. School advertising.

RELATES TO: KRS 332.216[332.060]

STATUTORY AUTHORITY: KRS 15A.160, 332.216[332.400]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.216 authorize the department to establish[332.400 provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may adopt such] administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding advertising by driver training schools.

Section 1. ~~A/No~~ person shall not advertise a driver training school or driver training of any type in this state unless licensed by the department.

Section 2. A school shall not use any name other than its licensed name, ~~and[nor shall]~~ a school shall not advertise or imply that it is "supervised," "recommended," "endorsed," "accredited," or "approved" by the Kentucky State Police or the Commonwealth of Kentucky. ~~A/No~~ [Neither shall any] reference shall be made to past or present association with any police agency by any person[person(s)] now an officer or employee of the school. Driver training schools which are licensed by the department may advertise~~;~~ ~~however, indicate on their advertising~~ [that they are "inspected and licensed by the Kentucky State Police."

Section 3. A driver training school shall not[may not];

(1) Make any false or misleading claim in any of its advertising;~~[and it shall not]~~ ~~nor shall it]~~

(2) Use a name that is like or deceptively similar to a name used by another driver training school;~~nor shall it]~~

(3) Advertise or imply that free lessons will be given to students who fail a motor vehicle operator's license examination.

Section 4. Each telephone directory listing or telephone advertisement of a driving school shall include the address or addresses of the driving school's established place or places of business. Addresses of telephone answering services that[which] are not established places of business shall not be shown in any media of advertisement or telephone directory listing.

Section 5. A driver training school shall not claim or[nor] imply that it will guarantee;

(1) Employment upon completion of a course of instruction; or

(2) [guarantee] The securing of a license to drive a motor vehicle.

Section 6. A copy of each telephone directory or similar directory advertisement of a driver training school shall be submitted to the department by the school at the same time it is placed for publication.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, July 14, 2022)

502 KAR 10:080. License suspension, revocation, denial.

RELATES TO: KRS 332.216[332.060]

STATUTORY AUTHORITY: KRS 332.202, 332.210, [15A.160, 165A.475,] 332.216[332.400]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations for the administration of all laws and functions which are vested in the cabinet, except for laws and functions vested in the Department for Public Advocacy. KRS[and] 332.216 requires the Department of Kentucky State Police to promulgate [authorize the department to] 332.400 provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may ~~adopt~~ such administrative regulations necessary to carry out the provisions of KRS Chapter ~~165A and~~ [Chapter] 332. This administrative regulation establishes the department's policy regarding ~~license~~ of licenses for driver training schools and driver training instructors.

Section 1. In addition to the provisions of KRS 332.216[332.060], and in accordance with KRS 332.210, the commissioner of the department[secretary] shall upon receipt of satisfactory evidence, suspend, revoke, refuse to issue, or refuse to renew the license of a driver training school or a driver training instructor if:

(1) The licensee fails or refuses to comply with the provisions of KRS Chapter ~~165A and~~ 332 or 502 KAR Chapter 10[any rule or administrative regulation adopted thereunder].

(2) The licensee has made a false material statement or has concealed a material fact in connection with his or her application.

(3) The licensee or any officer, director, partner, or other person directly interested in the driver training school held a license issued under KRS Chapter 332 that[165A.475] 332.030 ~~[which]~~ was revoked or suspended and not reinstated.

(4) The licensee has been guilty of a fraudulent practice in attempting to obtain for himself, herself, or another a license to operate a motor vehicle.

(5) Written notice of the cancellation of insurance required by KRS ~~165A or~~ 332.204[332.030] is received by the commissioner, and the licensee does not present satisfactory evidence of insurance to the commissioner prior to the effective date of the cancellation.

(6) The licensee has failed to maintain adequate standards of instructions or safe and necessary equipment that[which] is needed to give proper driver training instruction.

(7) The licensee is employing instructors or agents who have not been licensed by the department.

(8) The licensee has been convicted of a felony, or any crime involving violence, dishonesty, deceit, indecency, immoral conduct, or sexual abuse.

(9) The licensee or any officer, director, partner, ~~or other~~ person directly interested in the driver training school, or any instructor licensed under the name of the school has[shall have] in their possession a copy of the department's driver licensing examination questions or their equivalent, or attempts to obtain a copy of these test questions for the purpose of making them available to their students or any other person.

(10) The licensee has failed to provide or maintain premises, equipment, or conditions which are adequate, safe, and sanitary in accordance with 502 KAR Chapter 10[these administrative regulations].

(11) The licensee or any officer, director, partner, instructor, agent, or other person actively involved in the driver training school is addicted to the use of alcohol, morphine, cocaine, or other mood-altering drug.

(12) The licensee or any officer, director, partner, instructor, agent, or other person actively involved in the driver training school has been legally adjudged mentally incompetent.

Section 2. The license of a driver training instructor shall be revoked if the instructor is convicted of:

- (1) Driving a motor vehicle while under the influence;
- (2) Leaving the scene of an accident;
- (3) Reckless homicide;
- (4) Two (2) moving hazardous violations within a two (2) year period; or
- (5) Driving when addicted to, or under the influence of, narcotic drugs. [f] [Whenever] a driver training instructor is convicted of driving an automobile while under the influence or of leaving the scene of an accident, reckless homicide, two (2) moving hazardous violations within a two (2) year period, or driving when addicted to or while under the influence of narcotic drugs, his license shall be revoked.]

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, July 14, 2022)

502 KAR 10:090. Procedure for denial, suspension, nonrenewal or revocation hearings.

RELATES TO: KRS 165A.460[332.030]

STATUTORY AUTHORITY: KRS 15A.160, 332.216[332.400]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.216 authorize the department to establish [332.400 provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may adopt such] administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation outlines the administrative adjudication procedures of the department [cabinet] in license denial, suspension, nonrenewal and revocation hearings.

Section 1. [Scope and] Definitions.

- (1) "Commissioner" is defined by KRS 332.015(2).
- (2) "Contested case" means an adjudicatory proceeding before the department in which the legal rights, duties, or privileges of any person are required by law to be determined after an opportunity for a hearing, without regard to whether the proceeding is instituted by the department, or by some other person.
- (3) "Department" is defined by KRS 332.015(1).
- (4) "Party" means any person or agency named or admitted as a party to any proceedings conducted pursuant to 502 KAR Chapter 10 and includes only persons who have a real interest in the matter before the commissioner of the department.
- (5) "Person" means any individual, sole proprietorship, partnership, corporation, association, or public or private organization of any character.
- (6) "Order" means the whole, or any part, of a final disposition of an adjudication. [These administrative regulations govern the procedure for the department.] [Justice Cabinet] [in all proceedings under this chapter in which the legal rights, duties or privileges of any person licensed by the department] [cabinet] [is required by statutes or by these rules to be determined after an opportunity for a hearing. These rules shall be construed to secure a fair and impartial determination of every proceeding.
- (2) For purposes of administrative adjudicatory procedure unless the context otherwise requires:
 - (a) "Party" means any person or agency named or admitted as a party to any proceedings conducted pursuant to these administrative regulations and shall include only persons who have a real interest in the matter before the commissioner of the department] [secretary].
 - (b) "Person" means any individual, sole proprietorship, partnership, corporation, association or public or private

organization of any character.

(c) "Order" means the whole or any part of a final disposition of an adjudication.

(d) "Contested case" means an adjudicatory proceeding before the department [secretary] [in which the legal rights, duties, or privileges of any person are required by law to be determined after an opportunity for a hearing, without regard to whether the proceeding is instituted by the department] [cabinet] [or by some other person.

(e) [Cabinet] means the Justice Cabinet.

(f) "Secretary" means the Secretary of the Justice Cabinet.]

[(h) (g)] ["Department" means the Department of State Police.

(g) [(h)] ["Commissioner" means the Commissioner of the Department of State Police.]

Section 2. Complaints and Investigations.

(1) Complaints.

(a) A complaint may be made by any person against the holder of a license by the filing of written charges with the commissioner [secretary]. The written complaint shall contain:

1. The name and address of any person making charges, as well as the name and address of the person or persons against whom charges are being made; and

2. A clear and concise statement of the facts giving rise to the complaint.

(b) Any complaint or charge filed with the department [secretary] shall be forwarded to the licensee involved and the licensee shall be given thirty (30) days to resolve the problem or make a full satisfactory reply [thereto]. Any defamatory matter in a formal written complaint shall be excised [exercised] by the commissioner [secretary] prior to the complaint being forwarded to the licensee.

(2) Investigations. Upon the receipt of a complaint and following the expiration of the thirty (30) days provided for in subsection (1) of this section, the commissioner [secretary] may cause an investigation to be made [by the Department of State Police or by any agent or representative appointed by the secretary]. Upon the completion of any investigation, the person or persons making the [such] investigation shall submit a full written report to the person designated by the commissioner [secretary] to prosecute the matter in an adjudicatory proceeding.

Section 3. Commencement of Adjudicatory Proceedings. Upon the request of the prosecutor or after the expiration of the thirty (30) day period referred to in Section 2(1) of this administrative regulation if [where] an investigation is not made, the commissioner [secretary] may begin formal adjudicatory proceedings in accordance with the following procedure:

(1) If it is determined that the facts alleged in the complaint or [and/or] investigative report may constitute grounds for the suspension, probation, or revocation of a license, a hearing shall be scheduled before the commissioner [secretary], or his or her designated hearing officer, on those allegations. If [In any case in which] an application for license or renewal of license has been denied, a hearing shall only be scheduled upon receipt by the commissioner [secretary] of a written request submitted by or on behalf of the person whose application for license was denied or not renewed. Any required hearing shall be held within three (3) months, or as soon [thereafter] as practicable, after the receipt by the commissioner [secretary] of a written request for a hearing. In any contested case, whether it be instituted by the department [cabinet] or by some other person, all the parties to the proceeding shall be given reasonable notice and an opportunity to be heard.

(2) Notice. The notice provided for shall be issued in the name of the department [cabinet] by the commissioner [secretary] or designated hearing officer and shall state:

(a) The time, date, place, and nature of the hearing;

(b) The legal authority and jurisdiction under which the hearing is to be held;

(c) The alleged statutory or regulatory violations; and

(d) A short and plain statement of the complaint or charges which are being proffered [preferred] and the remedy that [which]

is being sought. The notice shall be personally served or mailed to the last known address of the party or parties not less than twenty (20) days before the date of the hearing, in accordance with KRS 13B.050.

(3) Appearance and service. In any contested case, the parties to the proceeding shall have the right to:

(a) 1. Appear personally at the hearing, and by counsel;

2. ~~[-, and shall have the right to -]~~ Cross-examine witnesses appearing against them; and ~~[-to]~~

3. Produce witnesses on their ~~[own]~~ behalf.

(b) When a party has appeared by an attorney, or otherwise designated an attorney as his representative, all communications, notices, orders, or other correspondence shall be served on this[such] attorney; Service on the attorney shall be considered as service on the party, and the hearing officer shall be notified of any change in the[such] attorney.

(4) The commissioner[secretary] or his or her designated hearing officer shall preside over the hearing proceedings; if the commissioner[secretary] presides, he or she may have assistance of counsel to rule on evidentiary matters.

(5) Authority to administer oaths. In hearings before the commissioner[secretary] or hearing officer, any oath or affirmation required may be administered by any person authorized to administer oaths by the laws of the Commonwealth of Kentucky.

(6) Presentation of evidence. The evidence against the licensee or other person concerning the pending complaint or charge shall be presented by the designated prosecutor. Additionally, any witness or other evidence may be questioned or introduced by the presiding officer.

Section 4. Conduct of Hearings; Witnesses; Burden of Proof; Evidence. The hearing shall be conducted in accordance with the requirements of KRS 13B.080.

(1) The presiding officer may hear testimony of any person present at the hearing who has information to offer [-bearing] on the subject matter of the[such] hearings. The presiding officer may ask any witness questions as may be required for a full and true disclosure of the facts. The presiding officer shall have only one (1) witness [-before him] at a[any one - (1)] time, and other witnesses may be excluded from the hearing room while any one (1) witness is being questioned.

(2) The hearing in a contested case involving a suspension, probation, or revocation of a license shall proceed in the following order, unless the presiding officer, for special reasons otherwise directs:

(a) The party filing the complaint or proffering[prefering] the charges, or the persons appointed or designated to present the evidence against the licensee, shall briefly state the substance of the charges and the evidence by which he or she expects to sustain them.

(b) The party against whom a complaint has been filed or charges otherwise proffered[preferred] may briefly state the substance of his or her defense and the evidence which he or she expects to offer in support of it.

(c) The party filing the complaint or otherwise proffering[prefering] the charges, or the designated prosecutor, shall have the burden of proof in the whole action and; therefore, he or she shall produce his or her evidence first; if The party against whom a complaint has been filed or charges proffered[preferred] may then produce his or her evidence. The presiding officer, however, may regulate the order of proof in any proceeding to expedite the hearing and to enable the presiding officer to obtain a clear view of the whole evidence.

(d) The parties shall then be confined to rebuttal evidence, unless the presiding officer, in accordance with KRS 13B.080[his or her discretion], permits them to offer additional evidence in chief.

(e) The parties may then submit the matter to the presiding officer for consideration, or present arguments on the issues involved. In the arguments, the party filing the complaint or otherwise proffering[prefering] the charges, or the designated prosecutor, shall have the conclusion, and the party against whom the complaint was filed or charges otherwise proffered[preferred] shall have the

opening.

(3) In a hearing requested in writing by a person whose application for a license has been denied or not renewed, the burden of proof and order of proceedings delineated in subsection (2) of this section shall be reversed.

(4) In any contested case, the presiding officer shall, as far as practical, adhere to the following rules of evidence:

(a) Any evidence which would be admissible under the statutes of the Commonwealth of Kentucky, and under the rules of evidence followed by circuit courts of the Commonwealth of Kentucky, shall be admitted in hearings before the presiding officer, except that; however, the presiding officer may admit evidence that would be inadmissible in the courts if the evidence is of the type commonly relied upon by a reasonable, prudent person [men] in the conduct of his or her [their] affairs.

(b) Every party shall have the right to present [-such] oral or documentary evidence, exhibits, and rebuttal evidence and conduct [such] cross-examination that[as] may be required for a full and true disclosure of the facts. Documentary evidence may be introduced in the form of copies or receipts if the original is not readily available if[provided that] upon request, the parties or the presiding officer shall be given an opportunity to compare the copy with the original.

(c) if[When] a hearing will be expedited and the interests of the parties will not be substantially prejudiced [-thereby], all or part of the evidence may be received in written form by affidavit or prepared statement. Prepared statements shall not be read or made a part of the record until the party against whom the statement is offered has been given a reasonable time for review and objection.

(d) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded and the presiding officer shall give effect to the rule of privilege recognized by the laws of the Commonwealth of Kentucky.

(e) The presiding officer may take notice of judicially cognizable facts.

(f) Objections to evidentiary offers may be made and shall be noted in the record.

(5) The parties to any hearing may agree to waive any one (1) or more of the procedural steps that[which] would otherwise precede the reaching of a final decision by the commissioner[secretary], but this[such] waiver shall not be binding on the commissioner[secretary].

Section 5. Deliberations; Records; Final Order. (1) Deliberations. During any hearing and after the case has been submitted to the commissioner[secretary] or hearing officer for decision, deliberations shall be governed by the following principles:

(a) Ex parte investigations. [Neither -] The commissioner, [secretary] [-nor any] hearing officer, or any other person who shall make findings of fact and conclusions of law in a contested case shall not, once a hearing has commenced, consult with any person or party in connection with any issue of fact or law, except upon notice and opportunity for all parties to participate; provided, however, that The commissioner[secretary] or hearing officer may have the aid and advice of one (1) or more personal assistants, including the assistance of counsel.

(b) Separation of functions. An[No] officer, employee, or agent of the department[cabinet] who is engaged in the performance of investigative or prosecuting functions in a contested case shall not, in that or a factually related case, participate or advise in the decision except as a witness or counsel in the public hearing.

(c) Examination of evidence. The commissioner[secretary] or hearing officer shall personally consider the whole record, or [-such] portions of the record[thereof] as may be cited by the parties before a decision is reached.

(d) The presiding officer [-at his or her discretion] may recess a hearing for the taking of additional discovery and evidence as required.

(2) Record. The record shall include all pleadings, motions, exhibits, documentary and testimonial evidence received or considered, a statement of matters officially noticed, and questions and offers of proof and rulings [-therein]. if[Should] any party requests[desire] a written transcript of the proceedings, the party shall be required to [it shall be necessary that they] pay for the[said] transcript.

(3) Recommended order. ~~If [in the event]~~ the commissioner~~[secretary]~~ designates a hearing officer as presiding officer of a hearing in a contested case, the hearing officer shall, as soon as practical after the conclusion of the hearing, but at a minimum, no [in no event] later than thirty (30) days after the hearing [thereafter], prepare findings of fact, conclusions of law, and a recommended order and provide a copy to [cause copies of same to be served on] all parties. The parties shall have ten (10) days following entry of the recommended order to file objections and comments~~[thereto]~~ with the commissioner~~[secretary]~~. The commissioner shall consider~~[secretary]~~~~[, after considering]~~ the record and the hearing officer's report consisting of a synopsis of procedural matters, findings of fact, conclusions of law, ~~[and]~~ the recommended order, and ~~[also]~~ any objections or comments filed by the parties before rendering[, shall render] a final order.

(4) Final order. The final decision in any case in which a hearing is required or requested shall be in writing and shall be made a part of the official~~[office]~~ record. It shall include a concise and explicit statement of the findings of fact and conclusions of law, separately stated, and shall be signed by the commissioner~~[secretary]~~. One (1) copy of the order shall ~~[forthwith]~~ be served on each party to the proceeding. Motions to correct clerical errors may be filed within ten (10) days after entry of the final order. Any subsequent modifying order~~[subsequent thereto]~~ shall be served on all parties.

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**JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, July 14, 2022)**

502 KAR 10:110. Third-party CDL skills test examiner standards.

RELATES TO: KRS 281A.160(4), 49 C.F.R. 383.75, 49 C.F.R. 383.131

STATUTORY AUTHORITY: KRS 281A.160(5), (8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.160(5) and (8) require the Kentucky State Police to promulgate administrative regulations for third-party CDL skills test examiners. This administrative regulation establishes the minimum qualifications, mandatory training requirements, and prohibited conflicts of interest for third-party CDL skills test examiners.

Section 1. Definitions. (1) "AAMVA" means the American Association of Motor Vehicle Administrators.

(2) "CDL" means a commercial driver license.

(3) "DOE" means the Kentucky Department of Education.

(4) "Family member" means:

(a) The current and ~~[, if any,]~~ former spouse, if any, of a third-party skills test examiner; ~~[, or]~~

(b) A person within the third degree of relationship to any of them; ~~[, or]~~

(c) The spouse of that person.

(5) "FMCSA" means the Federal Motor Carrier Safety Administration.

(6) "KSP" means the Kentucky State Police.

(7) "MOA" means memorandum of agreement.

(8) "Third-party CDL skills test examiner" means an employee of the DOE or a local board of education who, pursuant to a MOA entered into between KSP and their employer, administers CDL skills tests to other DOE or local board of education employees who are seeking a CDL to operate publicly-owned school buses, and persons retained by KSP under contractual agreement to administer CDL skills test to CDL applicants.

Section 2. Third-Party CDL Skills Test Examiner Minimum Qualifications. DOE employees or persons seeking to enter a contractual agreement with KSP to act as a third-party CDL skills test examiner shall satisfy the following minimum qualifications for

initial appointment and retention. The individual:

(1) Shall not have accrued more than six (6) demerit points on their driving record;

(2) Shall possess a high school diploma or GED;

(3) Shall, if a DOE employee, possess a Class A or B CDL with passenger and school bus endorsements;

(4) Shall, if a third-party contract examiner, possess:

(a) A Class A CDL with all available endorsements; and

(b) Previous experience as a CDL skills test examiner or two (2) years' experience within the past five (5) years as a licensed Class A or B CDL operator in good standing;

(5) Shall maintain their CDL license with all endorsements required by subsections (3) and (4) of this section;

(6) Shall pass one (1) complete battery of forms A, B, or C of the CDL knowledge tests administered by KSP. These tests shall be retaken every four (4) years;

(7) Shall pass the CDL skills test administered by KSP in the type of commercial vehicle in which they will test CDL applicants. This CDL skills test shall be retaken every four (4) years at the direction of KSP; and

(8) Shall give written consent to KSP to conduct a Kentucky criminal history records check, and further give written consent to an updated Kentucky criminal history records check being performed every four (4) years. Persons who are determined to have felony or misdemeanor convictions involving violence, dishonesty, or moral turpitude may be rejected for appointment, or have their appointment as a third-party CDL skills test examiner revoked ~~[, based upon a case-by-case discretionary consideration of the facts and circumstances surrounding the conviction.]~~

Section 3. Third-Party CDL Skills Test Examiner Mandatory Training Requirements. (1)(a) Except as provided in paragraph (b) of this subsection, persons appointed as a third-party CDL skills test examiner shall successfully complete the initial forty (40) hours of CDL skills test examiner training conducted by KSP and pass all exams associated with the training. This training shall be approved by AAMVA and FMCSA. Certificates of completion shall be issued by KSP upon successful completion of this training;

(b) Persons who have previously administered CDL skills tests for KSP and who have completed this training within the past two (2) years shall be waived from this training requirement.

(2) Third-party skills test examiners shall attend and successfully complete an annual ten (10) hour in-service training conducted by KSP.

(3) Third-party skills test examiners shall participate in the certification process for CDL examiners administered through AAMVA. This certification shall be sought and maintained through KSP. It shall be the responsibility of the third-party skills test examiner to pay all fees charged by AAMVA to obtain and maintain this certification. Failure to obtain this certification within two (2) years from the date of appointment as a third-party CDL skills test examiner shall be grounds for revocation of appointment.

(4) Third-party CDL skills test examiners shall be issued identification cards and a unique examiner identification number that identifies them as a CDL examiner. The identification card shall be carried and produced upon request of KSP. The examiner identification number shall be recorded by the third-party CDL skills test examiner on all CDL examination reports and related documents required by KSP to be completed by the examiner in the course of their duties.

(5) Third-party CDL skills test examiners shall conduct CDL skills tests in a uniform approved by KSP. KSP shall not be responsible for the purchase or maintenance costs for this uniform.

Section 4. Additional CDL Skills Test Requirements. (1) Third-party skills test examiners shall comply with 49 C.F.R. 383.75, Subparts G and H.

(2) Third-party CDL skills test examiners shall, without deviation, administer the CDL skills test in accordance with the AAMVA's 2005 CDL Test System Model CDL Examiner's Manual (July 2010 version or newer)~~[KSP Driver Testing Branch CDL Examiners Manual]~~.

(3) Third-party CDL skills test examiners shall record the CDL applicant's skills test scores.

(4) Third-party CDL skills test examiners shall be required to keep and maintain files pertaining to CDL tests that they have administered for a period of two (2) years. These records shall be subject to inspection by KSP or any other state or federal entity performing an audit of these records.

(5) Third-party skills test examiners shall be subject annually to at least ~~one (1) check ride every two (2) years~~~~[two (2)]~~~~[check rides]~~ performed by an official observer who, at the direction of KSP, shall ride with the examiner and observe the CDL skills test as it is given to ensure the examiner is administering the test in full compliance with all federal and state laws and administrative regulations.

(6) Third-party CDL skills test examiners shall be subject to "select tests" conducted by KSP. These tests shall consist of the CDL applicant being retested not later than two (2) days following the original test administered by the third-party CDL skills test examiner, utilizing commercial vehicle equipment provided by or on the behalf of the CDL skills test applicant at no cost to KSP. The retest results shall then be compared to verify that there are no deficiencies with the original test given by the third-party CDL skills test examiner. If the two (2) test scores differ, making a difference as to whether the CDL applicant passed or failed, the score given by KSP on its retest shall be entered into the official record as the actual score of the CDL applicant.

(7) Third-party CDL skills test examiners shall be subject to random inspection testing by KSP or FMCSA. These tests may consist of the third-party CDL skills test examiner administering a CDL skills test to a CDL applicant who is an agent of KSP or FMCSA without the examiner's knowledge of the individual's true identity.

(8) Third-party CDL examiners shall be subject to monitoring of their testing processes by KSP or FMCSA to ensure compliance with all federal and state laws and administrative regulations.

Section 5. Prohibited Conflicts of Interest. (1) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant who is a family member or who has received commercial truck driving instruction training at a commercial truck driving school that is owned or operated by a family member.

(2) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant with whom the examiner is involved in a dating, romantic, or other type of intimate personal relationship, regardless of whether the examiner and applicant share a residence.

(3)(a) Except as provided in paragraph (b) of this subsection, a third-party CDL skills test examiner who administers CDL skills tests under a contractual agreement with KSP and who is a present or former commercial truck driving school employee, shall not administer third-party CDL skills test exams to any CDL applicant who has attended a commercial truck driving school as a student of the examiner's present or former employer;

(b) Once a third-party CDL skills test examiner has ceased employment with a commercial truck driving school for at least one (1) year, the examiner may be authorized to administer CDL skills test exams to CDL applicants who are commercial truck driving students of their former employer, if KSP ~~[in its sole discretion]~~ determines that the examiner can administer the exam in a fair, unbiased, and legal manner as prescribed by the FMCSA, 49 C.F.R. Parts 383 and 384.

Section 6. Revocation of Appointment. Failure to comply with the requirements of this administrative regulation shall be grounds for revocation of appointment as a third-party CDL skills test examiner by KSP and shall further constitute good cause for termination of KSP's contractual obligations with examiners who administer CDL skills test pursuant to contract.

Section 7. Third-Party CDL Skills Test Examiner Records. All records pertaining to selection and appointment of third-party CDL skills test examiners shall be maintained by KSP. These records shall be reviewed prior to renewing CDL third-party CDL skills test examiner appointment, whether by Memorandum of Agreement with DOE or contractual agreement with other third-party CDL skills test examiners. Third-party CDL skills test examiner records shall contain the following information:

- (1) Copy of qualification questionnaire containing photo of individual;
- (2) Copy of DOE Memorandum of Agreement (if applicable);
- (3) Copy of criminal history and driving record;
- (4) All other documents related to the qualification and requirements of the examiner; and
- (5) Any investigations, select testing and covert testing, or monitoring conducted by KSP concerning the third-party CDL skills test examiner.

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

- ~~(a) "KSP Driver Testing Branch CDL Examiners Manual", Version 2.0. The manual is produced by AAMVA; and~~
- ~~(b) CDL Skills Test Reporting Form, July 2001.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Custodian of Records, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(As Amended at ARRS, July 14, 2022)**

502 KAR 10:120. Hazardous materials endorsement requirements.

RELATES TO: KRS 281A.120, 281A.130, 281A.150, 281A.160, 281A.170, 49 U.S.C. 5103a, 49 C.F.R. Parts 383, 1515, 1572

STATUTORY AUTHORITY: KRS 281A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate administrative regulations to reasonably carry out the provisions of KRS Chapter 281A. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining or renewing a hazardous materials endorsement for a commercial driver's license. This administrative regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

Section 1. Definitions. (1) "CDL" or "Commercial Driver's License" is defined by KRS 281A.010(5) and 49 C.F.R. 383.5.

(2) **"CDL testing location" means the department's regional CDL testing offices.**

~~(3)~~ "Determination of No Security Threat" is defined by 49 C.F.R. 1572.15(d)(1).

~~(4)~~~~(3)~~ "DOT" means the federal Department of Transportation.

~~(5)~~~~(4)~~ "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(4).

[(5) "Fingerprint centers" means the department's regional offices.]~~[of Kentucky State Police's Division of Driver's Testing]]~~
established to process the fingerprints of applicants for a hazardous materials endorsement for a commercial driver's license holder under KRS 281A.170(2)(b).]

(6) "HME" means hazardous materials endorsement.

(7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(2).

(8) "KSP" means the Kentucky State Police.

(9) "Proper identification" means:

(a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or

(b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee, or refugee status.

(10) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME. (1) An applicant applying for a hazardous materials endorsement shall first obtain a commercial driver's instruction permit or CDL prior to requesting a security threat assessment from the TSA. The applicant shall submit application information in accordance with 49 C.F.R. 1572.9.[A] ~~In order to receive the security threat assessment, the applicant shall complete a["Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 shall be submitted by the applicant.]~~ The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.

(2) To begin the process, an applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.

(3) An applicant shall bring proper identification, and ~~their DOT medical card,~~ a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, and a certified check of \$115 for the fingerprint fee.

(4) An applicant shall pay a \$115 fee for a fingerprint-based background check. The fee may be paid by:

(a) Certified check;

(b) Cashier's check;

(c) Money order; or

(d) Electronically before the appointment at https://secure.kentucky.gov/formservices/KSP/Hazmat_FP.

(5) An applicant shall be fingerprinted by KSP at a regional CDL testing location. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the biographical information sheet to the TSA.

(6)~~(5)~~ If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the applicant shall be notified by the Transportation Cabinet ~~that he or she is eligible [and may proceed to the circuit clerk's office]~~ to take the knowledge test required to qualify for the HME.

(7)~~(6)~~ If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the applicant shall not be issued a HME. The applicant may appeal the TSA's determination in accordance with 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with 49 C.F.R. 1515.7.

(8)~~(7)~~ Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications For HME. (1) The Transportation Cabinet shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.

(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.

(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655. A renewal applicant shall submit to fingerprinting and further complete the "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.

(4) A renewal applicant shall bring to the appointment proper identification, ~~[the applicant's DOT medical card,]~~ a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, and a certified check of \$115 for the fingerprint fee.

(5) A renewal applicant shall pay a \$115 fee for a fingerprint-based background check. The fee may be paid by:

(a) Certified check;

(b) Cashier's check;

(c) Money order; or

(d) Electronically before the appointment at https://secure.kentucky.gov/formservices/KSP/Hazmat_FP.

(6) A renewal applicant shall be fingerprinted by KSP at a regional CDL testing location. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.

(7)~~(6)~~ If the Commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the Transportation Cabinet may extend the expiration date of the HME for a period up to ninety (90) days. Any additional extension shall be approved by TSA.

(8)~~(7)~~ If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified by the Transportation Cabinet that he or she is eligible ~~[and may proceed to the circuit clerk's office]~~ to take the knowledge test required to qualify for the HME.

(9)~~(8)~~ If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the renewal applicant shall not be issued a HME. The renewal applicant may appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the renewal applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with 49 C.F.R. 1515.7.

(10)~~(9)~~ Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

(11)~~(10)~~ An applicant who has received a passing score on the HME test and is applying for a Class C CDL with a hazardous materials endorsement shall drive a Class C placarded vehicle for the skills test.

Section 4. Transfer Applications For HME. (1) In accordance with 49 C.F.R. 1572.13(e), an applicant who applies to transfer an existing HME from another state to the Commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

[Section 5. Regional Fingerprint Centers. KSP shall provide fingerprinting centers, regionally situated to provide efficient coverage of the state. Locations of the regional fingerprinting centers shall be published on the department's website.] ~~have eight (8) regional fingerprinting centers in the Commonwealth. These centers shall be located in the following cities:~~

(1) Lexington at 162 East Main Street, Room 201, Lexington, Kentucky 40507;

(2) Louisville at Bowman Field, 3501 Roger E. Schupp Street, Louisville, Kentucky 40205;

(3) Erlanger at 645 Stevenson Road, Erlanger, Kentucky 41018;

(4) Paducah at McCracken County Courthouse, South 7th, Paducah, Kentucky 42003;

(5) Madisonville at Hopkins County Courthouse, Main Street, Room 11, Madisonville, Kentucky 42431;

(6) Bowling Green at Warren County Courthouse, 1001 Center Street, Room 103, Bowling Green, Kentucky 42101;

(7) London at 225 West 5th Street (corner of 5th and Long Street), London, Kentucky 40743; and

(8) Paintsville at Johnson County Courthouse, Court Street, 2nd Floor, Paintsville, Kentucky 41240];

Section 6. Incorporation by Reference. (1) "Transportation Security Administration Application for a Hazardous Materials

~~Endorsement" OMB No. 1652-0027, Exp. 1/31/08, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at any KSP regional fingerprint centers, and at KSP Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
(As Amended at ARRS, July 14, 2022)

787 KAR 2:040. Local workforce development area governance.

RELATES TO: KRS 151B.017(4)~~[151B.020(6)]~~, 29 U.S.C. 3101 et seq.

STATUTORY AUTHORITY: KRS 151B.017(4)~~[151B.020(6)]~~ NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.017(4)~~[151B.020(6)]~~ requires the secretary of the Education and Workforce Development Cabinet to promulgate administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the membership criteria and operating guidelines for local workforce development boards, requires interlocal and partnership agreements for local workforce development areas, establishes the process for the identification of regions and designation of local workforce development areas, establishes the guidelines for the hiring of staff by local workforce development boards, [and] requires a written agreement for entities that perform multiple functions in a local workforce development area under the Workforce Innovation and Opportunity Act, 29 U.S.C. 3101 et seq., and addresses dissemination and implementation of policies and guidance issued by the Kentucky Workforce Innovation Board. [In addition to the minimum federal requirements set forth in 29 U.S.C. 3122,] This administrative regulation establishes[provides] further guidance and clarification, in addition to the minimum federal requirements established in 29 U.S.C. 3122, necessary for effective local implementation activities.

Section 1. Definition. "Workforce Innovation and Opportunity Act" or "WIOA" means 29 U.S.C. 3101 et seq.

Section 2. Local Workforce Development Board Membership Criteria and Operating Guidelines. Each chief local elected official in a local workforce development area shall appoint members to the local workforce development board and each local workforce development board shall operate in compliance with the Workforce Innovation and Opportunity Act (WIOA).

Section 3.[Section 2.] Interlocal Agreement. Each local elected official of a unit of general local government within a local workforce development area shall jointly execute a written interlocal agreement that, at a minimum, complies with the Workforce Innovation and Opportunity Act.

Section 4.[Section 3.] Partnership Agreement. Each chief local elected official, representing the local elected officials in a local workforce development area, and each designated chair, representing the local workforce development board, shall jointly execute a written partnership agreement that, at a minimum, complies with the Workforce Innovation and Opportunity Act.

Section 5.[Section 4.] Identification of Regions and Designation of Local Workforce Development Areas. The process and procedures for the identification of regions and the designation

of local workforce development areas within the Commonwealth of Kentucky shall be in compliance with WIOA.

Section 6.[Section 5.] Hiring of Staff for Local Workforce Development Boards. Local workforce development boards may hire a director and other staff in accordance with WIOA.

Section 7.[Section 6.] Entities Performing Multiple Functions in A Local Workforce Development Area. Entities that have been selected or otherwise designated to perform more than one (1) function in a local workforce development area shall develop a written agreement that, at a minimum, complies with WIOA.

Section 8.[Section 7.] Dissemination and Implementation of Policies and Guidance issued by the Kentucky Workforce Innovation Board. The local workforce development boards shall implement and disseminate policies, guidance, and manuals issued by the Kentucky Workforce Innovation Board, in coordination with the Governor and the Department of Workforce Investment, pursuant to the Workforce Innovation and Opportunity Act and accompanying Code of Federal Regulations.

CONTACT PERSON: Honor Barker, Deputy Commissioner, Department of Workforce Investment, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, phone (502) 782-3746, email honor.barker@ky.gov.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, July 14, 2022)

804 KAR 1:102. General advertising practices.

RELATES TO: KRS 244.130, 244.500, 244.590

STATUTORY AUTHORITY: KRS 241.060~~(1)~~, 244.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 244.130 authorizes the ~~[Department of]~~ Alcoholic Beverage Control Board to regulate the advertising of alcoholic beverages. This administrative regulation establishes standards for advertising in a manner consistent with modern marketing practices.

Section 1. Definition. "Social media" means all forms of electronic communication through which users create online communities to share information, ideas, personal messages, and other content.

Section 2. (1) A licensee may use outdoor advertising.

(2) If outdoor advertising is used by a manufacturer, producer, brewer, winery, distributor, or wholesaler, it shall not:

(a) Include a retail licensee's name or business designation (DBA); or

(b) Refer to a retail licensee in any other way.

Section 3. A licensee may advertise in material directed to the home or business of a consumer if the advertising material is in conformity with KRS 244.130 and this administrative regulation.

Section 4. (1) Except as provided by subsections (2) and (3) of this section, advertising novelties may be used.

(2) A licensee shall not require the purchase or consumption of an alcoholic beverage as a condition for the sale, gift, or reduction in price of an advertising novelty.

(3) Except as provided by KRS 244.590(2)(a), a malt beverage distributor shall not sell, give away, or furnish advertising novelties, in any manner to a retail licensee.

Section 5. A licensee may advertise by means of radio and television.

Section 6. A licensee may advertise by means of the Internet and social media.

Section 7. (1) A licensee may sponsor or cosponsor athletic leagues, tournaments, contests, and charitable events if the consumption or purchase of alcoholic beverages is not a requirement for participation.

(2) A licensee sponsoring or cosponsoring an event described in subsection (1) of this section upon a retail licensed premises shall not require the retail licensee to purchase, sell, or distribute the products of the sponsoring licensee as a condition for participation in or in connection with the event.

Section 8. A licensee shall not use the terms "free", "complimentary", or any other terms, ~~that~~**[which]** imply or suggest giveaways in the advertising of alcoholic beverages.

Section 9. A licensee shall not advertise a product, service, or activity if the licensee is prohibited by statute or administrative regulation from selling, providing, or conducting it.

Section 10. This administrative regulation shall not be interpreted to relate to direct shipping **in accordance with KRS 241.060(1).**

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PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, July 14, 2022)

804 KAR 11:041. Growlers.

RELATES TO: KRS 241.060, **27 C.F.R. 16.20-16.22**

STATUTORY AUTHORITY: KRS 241.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the Alcoholic Beverage Control Board to regulate the sale of alcoholic beverages. This administrative regulation allows a licensee that holds a retail malt beverage license to sell growlers.

Section 1. Definition. "Growler" means a refillable, resealable vessel no larger than two (2) liters with a flip-top or screw-on lid into which a malt beverage is prefilled, filled, or refilled for off-premises consumption. "Growler" shall not mean a vessel of similar size or capacity that is primarily used for the storage of other non-alcoholic liquids.

Section 2. The holder of a license permitting malt beverage package sales for off-premises consumption may sell filled growlers at retail for off-premises consumption if:

(1) The growler is cleaned and sanitized by the licensee or its employee prior to being filled as prescribed in Section 3 of this administrative regulation;

(2) The growler is filled and securely resealed by the licensee or an employee at least eighteen (18) years old before being removed from the premises;

(3) The growler has a label affixed to it, legibly stating:

(a) The brand name of the product;

(b) The name and address of the brewer or bottler;

(c) The class of product (beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);

(d) The name and address of the licensee that filled or refilled the growler;

(e) The following statement, "This product may be unfiltered and unpasteurized. Keep refrigerated at all times."; and

(f) The alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. 16.20 through 16.22; and

(4) The label is affixed to the vessel by:

(a) Neck hanger;

(b) Adhesive;

(c) String; or

(d) Other means.

Section 3. Cleaning, Sanitizing, Filling, and Sealing.

(1) Filling and refilling growlers shall only occur at the request of a customer.

(2) Except as provided by subsection (3) of this section, prior to refilling a growler, the growler and its cap shall be cleaned and sanitized by the licensee or its employee by:

(a) Manual washing in a ~~1-3~~**(3)** compartment sink. The licensee or its employee shall:

1. Prior to starting, clean sinks and work area to remove any chemicals, oils, or grease from other cleaning activities;

2. Empty residual liquid from the growler to drain, but not into the cleaning water;

3. Clean the growler and cap using detergent and water exceeding 110 degrees Fahrenheit, a temperature compliant with Kentucky Department for Public Health standards in 902 KAR 45:005, or the temperature specified on the detergent manufacturer's label instruction. Detergent shall not be fat- or oil-based;

4. Remove any residues on the interior and exterior of the growler and cap;

5. Rinse the growler and cap in the middle compartment with water. Rinsing may be from the spigot with a spray arm, from a spigot, or from the tub as long as the water for rinsing ~~is~~**[shall]** not ~~be~~**[stagnant and is/shall be]** continually refreshed;

6. Sanitize the growler and cap in the third compartment. Chemical sanitizer shall be used in accordance with the EPA-registered label use instructions and shall meet the minimum water temperature requirements of the chemical; and

7. **Provide and make readily accessible for use** a test kit or other device that accurately measures the concentration of MG/L of chemical sanitizing solutions ~~[shall be provided and be readily accessible for use];~~ or

(b) Mechanical washing and sanitizing machine.

1. Mechanical washing and sanitizing machines shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer and shall be used according to the machine's design and operation specifications;

2. Mechanical washing and sanitizing machines shall be equipped with chemical or hot water sanitization;

3. Concentration of the sanitizing solution or the water temperature shall be accurately determined by using a test kit or other device; and

4. The machine shall be regularly serviced based upon the manufacturer's or installer's guidelines.

(3) Notwithstanding subsection (2) of this section, a growler may be filled or refilled without cleaning and sanitizing the growler by:

(a) Filling or refilling a growler with a tube as referenced in subsection (4) of this section;

1. Food grade sanitizer shall be used in accordance with the EPA-registered label use instructions;

2. A container of liquid food grade sanitizer shall be maintained for malt beverage taps that will be used for filling and refilling growlers;

3. Each container shall contain tubes that will be used only for filling and refilling growlers;

4. The growler ~~shall be~~**[is]** inspected visually for contamination;

5. The growler ~~shall be~~**[is]** filled or refilled with a tube as prescribed in subsection (5) of this section; and

6. A different tube from the container shall be used for each fill or refill of a growler; or

(b) Filling a growler with a contamination-free process. The growler shall be:

1. Inspected visually for contamination; and

2. Compliant with the Kentucky Food Code, incorporated by reference in 902 KAR 45:005.

(4) Growlers shall be filled or refilled from the bottom of the growler to the top with a tube that is attached to the malt beverage faucet and extends to the bottom of the growler or with a commercial filling machine.

(5) When not in use, tubes to fill or refill growlers shall be immersed and stored in a container with liquid food grade sanitizer.

(6) A growler shall be closed with a flip-top or screw-on lid or cap and sealed in a manner designed to prevent consumption without conspicuous and evident tampering.

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**PUBLIC PROTECTION CABINET
Department of Insurance
Licensing Division
(As Amended at ARRS, July 14, 2022)**

806 KAR 9:380. Limited Lines Self-Service Storage Space Insurance Requirements.

RELATES TO: KRS 304.4-010, 304.9-030, 304.9-105, 304.9-130, 304.9-150, 304.9-230, 304.9-260, 304.9-270, 304.9-495, 304.9-497

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-080, 304.9-496

NECESSITY, FUNCTION, AND CONFORMITY: 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 304.9-080 requires a self-service storage space insurance producer to be licensed and requires the commissioner to prescribe and furnish all forms required under KRS Chapter 304.9 as to licenses and appointments. KRS 304.9-496 requires[authorizes] the commissioner to prescribe a register form for a limited lines of self-service storage space insurance producer for the purpose of maintaining a list of each facility that offers this insurance on the producer's behalf[issue an agent's license with the limited line of authority for self-service storage space insurance producer and requires the commissioner to promulgate administrative regulations to establish the requirements. KRS 304.9-496 also authorizes the commissioner to issue licenses to act as a self-service storage space insurance producer and requires the commissioner to prescribe an application form for a business entity seeking to act as a limited lines self-service storage space insurance producer]. This administrative regulation establishes the information to be included in the application for a limited lines self-service insurance storage space producer, [and] the recordkeeping requirements for a self-service storage facility and their employees who offer and disseminate self-service storage space insurance, and the register form.

Section 1. Definitions.

(1) "Limited lines self-service storage space insurance producer" is defined by KRS 304.9-495(1).

(2) "Self-service storage facility" is defined by KRS 304.9-495(6).

(3) "Self-service storage space insurance" is defined by KRS 304.9-495(7).

Section 2. License Application. (1) To apply for a limited lines self-service storage space insurance producer license, an applicant shall submit:

(a)[(1)] The appropriate completed form:

1.[(a)] For individuals, Form 8301, incorporated by reference in 806 KAR 9:025; or

2.[(b)] For Business Entities, Form 8301-BE, incorporated by reference in 806 KAR 9:025; [and]

(b)[(c)] A register, signed by the licensed limited lines self-service storage space insurance producer[produce] applicant, as prescribed on the Self-Service Storage Space Location Form, and in accordance with KRS 304.9-496(1)(b); and

(c) Payment of fees in accordance with 806 KAR 4:010[that shall include:

1. All facility locations proposed to offer and disseminate self-service storage space insurance by the limited lines self-service storage space insurance producer applicant;

2. Federal Employment Identification Number; and

3. Contact information for each self-service storage facility proposed to offer and disseminate self-service storage space insurance, including contact information for any facility operators].

(2) The register provided on the Self-Service Storage Space Location Form shall be made available to the department upon request.

Section 3. Limited Lines Self-Service Storage Space Insurance Producer Responsibilities. A[The] licensed limited lines self-service storage space insurance producer shall:

(1) Be responsible for the acts of the self-service storage facility operator that occur within the scope of their operation of a self-service storage facility;

(2) Provide a program for instructional training to the employees of the self-service storage facility operator;

(3) Be responsible for the insurance activities of the self-service storage facility, its operators, unlicensed employees, and representatives;

(4) Report all material changes and additions to the department within thirty (30) days; and

(5) Before transacting any business at any location, ensure that the self-service storage facility and its operators provide the appropriate consumer protection disclosures as prescribed in KRS 304.9-497 to all prospective consumers in writing.

Section 4. Material Incorporated by Reference.

(1) The Self-Service Storage Space Location Form, 2/2022 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>.

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.

**PUBLIC PROTECTION CABINET
Department of Insurance
Licensing Division
(As Amended at ARRS, July 14, 2022)**

806 KAR 9:390. Portable Electronics[Electronic] Retailer license.

RELATES TO: KRS 304.4-010, 304.9-020, 304.9-440, 304.9-782, 304.9-784

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-780

NECESSITY, FUNCTION, AND CONFORMITY: 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 304.9-780 authorizes the commissioner to issue a portable electronics insurance retailer license to offer and disseminate portable electronics[electronic] insurance and requires the commissioner to promulgate administrative regulations to establish the requirements for licensure. This administrative regulation establishes the information to be included in the application for a portable electronics[electronic] insurance retailer license, and recordkeeping requirements for portable electronics[electronic] insurance retailers and their employees who offer and disseminate portable electronics insurance.

Section 1. Definitions.

(1) "Portable electronics" is defined by KRS 304.9-020(16).

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(2) "Portable electronics insurance" is defined by KRS 304.9-020(17)(a) and (b).

(3) "Portable electronics insurance supervising entity" is defined by KRS 304.9-020(18).

(4) "Portable electronics retailer" is defined by KRS 304.9-020(19).

Section 2. License Application. To apply for a portable ~~electronics~~~~electronic~~ retailer license, an applicant shall submit:

(1) Business Entities Application, Form PEI; and

(2) If the portable ~~electronics~~~~electronic~~ retailer receives more than fifty (50) percent of its revenue from the sale of portable electronic insurance, the following information on the Form PEI-Locations:

(a) Contact information for officers, directors, and shareholders who have an ownership interest in the portable ~~electronics~~~~electronic~~ insurance retailer of ten (10) percent or more;

(b) The percentage of ownership for each officer, director, or shareholder holding an ownership interest in the portable ~~electronics~~~~electronic~~ retailer of ten (10) percent or more; and

(c) The title of and affiliation with the portable ~~electronics~~~~electronic~~ retailer for any such officer, director, or shareholder; and

(3) The corresponding fees established by 806 KAR 4:010.

Section 3. Register. (1) A licensed portable electronics insurance supervising entity shall maintain a register on a Form PEI-Locations that includes:

(a) The current name of the portable ~~electronics~~~~electronic~~ retailer;

(b) The address for each business location including:

1. Street addresses; and
2. City, state, and zip code.

(2) The register shall be made available to the department upon request.

Section 4. Portable Electronics Insurance Retailer Supervising Entity Responsibilities. The portable electronics insurance retailer supervising entity shall:

(1) Be responsible for the insurance activities of the portable ~~electronics~~~~electronic~~ retailer and its unlicensed employees and representatives; and

(2) Report all material changes and additions to the department within thirty (30) days.

Section 5. Material Incorporated by Reference. (1) The following materials are incorporated by reference:

(a) Business Entities Application, Form PEI, 7/2022~~[2/2022]~~; and

(b) Form PEI-Locations, 2/2022.

(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>.

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.

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General
Division of Certificate of Need
(As Amended at ARRS, July 14, 2022)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The ~~[2020-2022]~~ State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "2022 Update to the~~[2020-2022]~~ State Health Plan", July~~[June]~~ 2022~~[January 2022]~~~~[August 2020]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.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.

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Certificate of Need (As Amended at ARRS, July 14, 2022)

900 KAR 6:075. Certificate of need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.015, 216B.020, 216B.040, 216B.062, 216B.090, 216B.095, 216B.115, 216B.455, 216B.990, 311A.025(4)

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1., 216B.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1. requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>.

(4) "Days" means calendar days, unless otherwise specified.

(5) "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7) "Public notice" means notice given through the cabinet's Certificate of Need Newsletter.

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(3)(f), the Office of Inspector General shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital and was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent certificate of need approval;

2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service that the applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours; [or]

(c)1. The proposal involves an application to establish an ambulatory surgical center that does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation;

(d) The proposal involves an application to establish an industrial ambulance service;

(e) Prior to July 1, 2026, the proposal involves an application by:

1. An ambulance service that is owned by a city or county government seeking to provide ambulance transport services pursuant to KRS 216B.020(9)(a)1. or 2.; or

2. A licensed hospital seeking [health facility to establish a Class I ground ambulance service operating at the Advanced Life Support (ALS) or Basic Life Support (BLS) level] to provide [nonemergency] transport from a location that is not a health care facility pursuant to KRS 216B.020(9)(a)3. and (b);

(f) [of individuals if the applicant agrees to the following restrictions to be placed on its proposed certificate of need and ground ambulance license:

1. The applicant shall only transport individuals who are patients of the licensed health facility or a health facility under common ownership; and

2. The applicant shall only transport individuals to or from its health facility or a health facility under common ownership and another licensed health facility, the individual's place of residence, or other community-based setting; or

(e) The proposal involves an application to transfer acute care beds from one (1) or more existing Kentucky-licensed hospitals to establish a new hospital under the following circumstances:

1. The existing hospital and new facility shall be under common

ownership and located in the same county;

2. No more than fifty (50) percent of the existing hospital's acute care beds shall be transferred to the new facility; and

3.a. If the existing hospital is a state university teaching hospital, the existing hospital exceeded, by at least one (1), the minimum number of quality measures required to receive supplemental university directed payments from Kentucky Medicaid for the state fiscal year preceding the date the application was filed; or

b. If the existing hospital is not a state university teaching hospital, the existing hospital's overall rating by the Centers for Medicare and Medicaid Services Hospital Compare was three (3) stars or higher on the [two (2) most recent annual update/updates] to the overall star ratings [for three (3) out of the last four (4) reported quarters] preceding the date the application was filed; or

(g)1. The proposal involves an application from a Program of All-Inclusive Care for the Elderly (PACE) program that:

a. Has met the requirements of the State Readiness Review (SRR) according to a report submitted by the Department for Medicaid Services (DMS) to the Centers for Medicare and Medicaid Services (CMS);

b. Seeks to provide, directly to its members, a health service that is not exempt from certificate of need (CON) under KRS 216B.020(1); and

c. Ensures that all services authorized under the PACE agreement are provided exclusively to its members who reside within the service area. The service area shall be:

(i) Located within the Commonwealth of Kentucky; and

(ii) Approved by both CMS and DMS.

2. Only an approved PACE program operating within the applicant's service area shall qualify as an affected person for the purpose of opposing a PACE program application.

3. A PACE program shall not be required to obtain certificate of need (CON) approval if the program:

a. Provides direct patient health services that are exempt from CON under KRS 216B.020(1) and provides other services subject to CON approval through contracts with licensed providers; or

b. Has already obtained CON approval within the approved PACE service area to provide a health service that is not exempt from CON; and

3. No more than fifty (50) percent of the existing hospital's acute care beds shall be transferred to the new facility].

(4) A certificate of need approved for an application submitted under subsection (3)(c) of this section shall state the limitations specified under subsection (3)(c)1. and 2. of this section.

(5) If an application is denied nonsubstantive review status by the Office of Inspector General, the application shall automatically be placed in the formal review process.

(6) If an application is granted nonsubstantive review status by the Office of Inspector General, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(7)(a) If an application is granted nonsubstantive review status by the Office of Inspector General, any affected person who believes that the application is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2. of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.

2. If the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.

(d) Nonsubstantive review applications may be consolidated for hearing purposes.

(8) If an application for certificate of need is granted nonsubstantive review status by the Office of Inspector General,

there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan.

(9) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.

(10) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Inspector General shall approve each application for a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply.

(11) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8) of this section has been rebutted by clear and convincing evidence by an affected party.

(12) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing that is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(14) A decision to approve or disapprove an application that has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted, as required by KRS 216B.095(1). A hearing officer shall prioritize rendering decisions regarding applications granted nonsubstantive review status pursuant to Section 2(3)(g)(d) of this administrative regulation.

(15) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

Section 3. Exemption from Certificate of Need. (1) A city or county government-owned ambulance service that meets the criteria established by KRS 216B.020(8) shall not be required to obtain a certificate of need to provide emergency ambulance transport services.

(2) A hospital-owned ambulance service shall not be required to obtain a certificate of need to provide non-emergency or emergency transport that originates from its hospital pursuant to KRS 216B.020(7).

(3)(a) If a hospital-owned ambulance service has certificate of need approval prior to the most recent effective date of this administrative regulation to provide transport services from another health facility to its hospital, the service shall not be required to obtain authorization in accordance with paragraph (b) of this subsection.

(b) A hospital-owned ambulance service that is exempt from certificate of need under KRS 216B.020(7) may provide transport services from another health facility to its hospital if authorized as set out in KRS 311A.025(4).

(c)1. As used in paragraph (b) of this subsection, a hospital is authorized to provide inter-facility transport of a patient if:

a. The hospital contacts by phone at least one (1) ground ambulance provider with jurisdiction in the territory in which the other health facility is located, using contact information from the most recent edition of the agency directory maintained

by the Kentucky Board of Emergency Medical Services at the following link

(https://kbems.kctcs.edu/legal/EMS%20Directory.aspx); and

b. The ground ambulance provider:

(i) Declines the hospital's request for patient transport; or

(ii) Is not able to initiate the patient's transport within four (4) hours of receiving the hospital's request.

2. For purposes of this paragraph, a provider initiates transport when it arrives at the hospital to transport the patient.

3. The hospital shall document the ambulance service contacted and the reason for authorization to provide transport from another health facility to its hospital.

(4)(a) In accordance with KRS 216B.020(12)(a), the provisions of this section and Section 2(3)(e) of this administrative regulation shall expire on July 1, 2026.

(b) In accordance with KRS 216B.020(12)(b), a certificate of need exemption granted to an ambulance service under this section of this administrative regulation shall remain in effect on and after July 1, 2026.

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CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(As Amended at IJC on Health and Welfare on July 20, 2022)

902 KAR 10:120. Kentucky public swimming and bathing facilities.

RELATES TO: KRS Chapter 13B, 211.015, 211.090, 211.210, 211.220[211.480], 211.990(2), 322.110, 323.020, 29 C.F.R. 1910.119, 15 U.S.C. 8003

STATUTORY AUTHORITY: KRS [Chapter 13B,]194A.050(1), 211.180(1)[211.090(3), HB 492 (1988 Acts), EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet[HB 492 (1988 Acts) directs the Cabinet for Health Services to regulate the design and construction of water distribution and treatment systems for swimming pools]. KRS 211.180 authorizes[directs] the cabinet [for Health Services] to adopt administrative regulations relating to public facilities[,/] and their operation and maintenance in a safe and[.] sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform standards for public swimming pools and [other swimming or] bathing facilities. [The function of this administrative regulation is to assure the proper design and construction of new facilities as related to water distribution and treatment systems, and the proper operation and maintenance of all such facilities in a manner which will protect the public health. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Accessible" means **having access[, if applied] to a fixture, connection, appliance or equipment, even if it is necessary to remove having access to it, but may require the removal of an access panel, door, or similar obstruction.**

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other device, and the flood level rim of the receptacle.

(4) "Alkalinity" or "total alkalinity" means the amount of carbonates

or bicarbonate present in water solution as expressed in parts per million (ppm).

(5) "Approved" means that which is acceptable to the cabinet.

(6) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(7) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(8) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.

(9) "Bather" means a person using a public swimming and bathing facility.

(10) "Cabinet" is defined by KRS 211.015(a).

(11) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(12) "Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that **will need to/must** be periodically replaced.

(13) "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.

(14) "Equalizer line" means the connection from the skimmer housing to the pool, spa, or hot tub below the weir box, which:

(a) Is sized to satisfy pump demand and prevent air lock or loss of prime; and

(b) Contains a float valve assembly and pop-up valve.

(15) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

(16) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.

(17) "Filter aid" means an enhancement to the efficiency of the filter media.

(18) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

(19) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit.

(20) "Filtration rate" means the rate of water flow through a filter while in operation.

(21) "Float valve assembly" means a mechanism designed to disengage the skimmer in order to prevent air from entering the pump if the water level drops below the skimmer level.

(22) "Flow meter" means a device that measures the flow of water through piping.

(23) "Head loss" means the total pressure drop between the inlet and the outlet of a component.

(24) "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.

(25) "Hydrojet" means a fitting which blends air and water, creating a high velocity, turbulent stream of air enriched water.

(26) "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.

(27) "Main outlet" means an outlet fitting at the deepest point of the horizontal bottom of a pool through which water passes to a recirculating pump or surge tank, **and/- it** is often referred to as a "main drain".

(28) "Modulating valve" means a valve that automatically regulates the flow of water from the main drain through the use of a float ball.

(29) "Perimeter overflow system" means a channel at normal water level that extends completely around the pool perimeter and is used to remove surface debris, also known as an overflow or scum gutter.

(30) "Perlite filter" means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that must be periodically replaced.

(31) "Play feature" means a structure or feature that is added to a pool for the purpose of entertainment.

(32) "Plunge pool" means a pool or area within a pool designed as the termination point for a water slide or water ride.

(33) "Pop-up valve" means a mechanism located under the float

valve assembly that opens to allow water to reach the pump when the float valve is activated.

(34) "Positive shutoff valve" means a valve that completely stops the flow of water.

(35) "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.

(36) "Public swimming and bathing facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing, **except for/- it does not include** a pool at a private single family residence intended only for the use of the owner and guests.

(37) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(38) "Septum" means that part of the filter element consisting of cloth, **for** closely woven fabric, or other porous material on which the filter cake is deposited.

(39) "Skimmer" means a device designed to continuously remove surface film and water and return it through the filter.

(40) "Spray pad" means an area **that**:

(a) **Has/with** aquatic play features that spray or drop water for the purpose of wetting people;

(b) **Is/- and are** designed so that there is no accumulation or ponding of water on the ground;**;/ and**

(c) Includes both recirculating and non-recirculating water systems.

(41) **"State Building Code" means the requirements established in 815 KAR Chapter 7.**

(42) **"State Plumbing Code" means the requirements established in 815 KAR Chapter 20.**

(43) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(44)/(42) "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of a pump.

(45)/(43) "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available chlorine that is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(46)/(44) "Surge tank" means a storage vessel within the pool recirculation system used to retain the water displaced by bathers.

(47)/(45) "Total discharge head" means the amount of water that a pump will raise water above its center line.

(48)/(46) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(49)/(47) "Total residual chlorine" means the arithmetical sum of free available chlorine and combined chlorine, **which/and** is composed of the following components:

(a) Free available chlorine, which is the amount of chlorine available to inactivate microorganisms and that has not reacted with ammonia, nitrogenous material, and other contaminants in **facility/swimming pool** water; and

(b) Combined chlorine (also called "chloramine"), which is the amount of chlorine that has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds.

(50)/(48) "Total suction head" means the amount of water that a pump will lift by suction.

(51)/(49) "Turnover rate" means the time **requirements**, in hours or minutes, **[required]** for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(52)/(50) "Wading pool" means a pool or area within a pool where the water depth is twenty-four (24) inches or less.

(53)/(41) "Weir box" means an overflow system placed at normal operating water surface level to remove surface debris and does not form a continuous loop around the pool perimeter.

Section 2. Submission of Plans and Specifications for Approval.

(1) **A/No** person shall **not** construct, alter, or reconstruct a public swimming and bathing facility until approval of detailed plans and

specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.

(2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to 902 KAR 10:121.

(3) The front page of the plans submitted for review and approval shall contain the:

- (a) Name of the swimming and bathing facility;
- (b) Location by city and county;
- (c) Name and contact information for the facility owner;
- (d) Name of the installer; and
- (e) Name of the engineer, architect, or person preparing the plans.

(4) Plans submitted by an engineer or architect shall bear the individual's official seal.

(5) Plans and specifications on public swimming and bathing facilities constructed by the state or local government, or for a facility with surface area greater than 1,600 square feet, shall be prepared by an engineer or architect registered in the State of Kentucky.

(6) The plans shall be:

- (a) Drawn to scale;
- (b) Accompanied by proper specifications to permit a comprehensive review of the plans, including the piping and hydraulic details; and

- (c) Include:

1. A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

2. A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

3. The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, diving boards, safety equipment, and other related equipment; and

4. Drawing of equipment room showing placement of equipment.

(7) One (1) set of approved plans shall be kept at the job site and available for inspection.

(8) Upon completion of recirculation piping system construction and prior to ~~the[such]~~ piping being ~~tested for~~ air pressure ~~[tested]~~ at ten (10) pounds per square inch of pressure for fifteen (15) minutes and covered, the owner or builder shall contact the cabinet for inspection.

(9) Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.

(10) The facility shall not be used before receiving a final inspection and written approval from the cabinet.

(11) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(12) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet.

Section 3. Water Supplies. (1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing:

(a) Sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility; ~~[f]~~ and

(b) ~~[be capable of providing]~~ Enough water to raise the water level ~~by at least one (1) inch in three (3) hours~~ in:

1. Swimming, diving, or wave pools; ~~[f]~~ and

2. Water slide plunge pools ~~[f]~~, ~~at least one (1) inch in three (3) hours~~.

Section 4. Water Quality and Sanitary Requirements for Bathing Beaches. (1) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and

bacteriological characteristics of the bathing beach area and the watershed.

(2) Physical quality. The following characteristics shall not be present in the beach area or watershed:

(a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; ~~or[and]~~

(b) Hazardous substances being discharged into bathing beach water or watershed.

(3) Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:

(a) It shall meet the requirements of 401 KAR 10:031. Satisfactory bacteriological results shall be obtained before approval for construction is considered; and

(b) There shall ~~not~~ be ~~any[no]~~ sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.

(4) Chemical quality. There shall ~~not~~ be ~~any[no]~~ discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

Section 5. Sewage and Wastewater Disposal. (1) Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer.

(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085.

(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. ~~This[Such]~~ drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment for the breeding of insects.

(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable, to a system approved by the cabinet.

Section 6. Refuse Disposal. (1) All refuse at a public swimming and bathing facility shall be disposed of in a manner approved by the Energy and Environment Cabinet in KAR Title 401.

(2) An adequate number of refuse containers ~~[f]~~ with tight fitting lids shall be provided at readily accessible locations at all public swimming and bathing facilities.

(3) Refuse containers in women's restrooms shall be kept covered.

(4) Bulk refuse storage areas shall be designed and maintained to prevent rodent harborage.

(5) Bulk refuse containers shall be:

(a) Of approved design and construction;

(b) Kept closed; and

(c) Placed upon an impervious surface within a suitable enclosure to prevent access by animals.

Section 7. Facility Design and Construction. (1) All public swimming and bathing facilities, and attendant structures, such as bathhouses, dressing rooms, or restrooms, except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.

(2) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet. Within ~~these[such]~~ limits of safe swimming there shall ~~not~~ be ~~any[no]~~ boating, underwater obstructions, or other hazards that may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.

(3) If diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats or inflatable features where diving is permitted shall be at least nine (9)

and one-half (1/2) feet deep.

(4) Depth markings and lane lines.

(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility, if possible, and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:

1. At the points of maximum and minimum depths;

2. At the point of change of slope between deep and shallow portions or *[if transition point]*;

3. At intermediate two (2) feet increments of water depth; and

4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.

(b) Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet as measured peripherally.

(c) Depth markers shall be in Arabic numerals at least four (4) inches high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be plainly visible to persons in the facility.

(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.

(e) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet) **except when the pool is being used for organized activities or during operation as a wave pool.** The line shall be placed one (1) foot toward the shallow end from where the break occurs.

Section 8. Facility Water Treatment Systems. (1)(a) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities, except bathing beaches.

(b) All system components, including piping, shall bear the **NSF International (NSF)** **[National Sanitation Foundation]** potable water (NSF-pw) mark.

(c) Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.

(2) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control and a flow meter shall be provided in the recirculation pump discharge piping.

(b) The turnover rate shall be:

Type of Facility	Turnover Required
Diving pools	8 hours or less
Wading pools, Spas, Therapy pools, Spray pad holding tanks, Facility equipped with a spray feature not providing additional filtered and disinfected water to the spray feature	30 minutes or less
Wave pools, Lazy rivers, Water rides	2 hours or less
Vortex pools, Plunge pools	1 hour or less
All other pools	6 hours or less

(c) Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.

(d) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.

(e) The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;

2. Seventy (70) feet for pressure sand or cartridge filters; or

3. Eighty (80) feet for pressure diatomaceous earth filters and perlite filters.

(f) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(g) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(h) A compound vacuum-pressure gauge or vacuum gauge shall be installed on the suction side of the pump.

(i) A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(j) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(k) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.

(3) Water heaters shall be installed at all indoor swimming and bathing facilities, and shall comply with the following:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

(d) An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to swimming and diving pools and in excess of 104 degrees Fahrenheit for spas shall be provided *[i]* and **shall** be accessible only to the facility operator;

(e) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code;

(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code;

(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and

(j) All heaters shall meet the latest standards of applicable recognized testing agencies.

(4) A flow meter shall be:

(a) Located so that the rate of recirculation may be easily read;

(b) Installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence, except for those specifically designed without separation parameters; and

(c) Installed on each recirculation system, spray pad feature, waterslide, any other type of spray feature, and on multiple filtration units.

(5) Vacuum cleaning system.

(a) A vacuum cleaning system shall be:

1. Provided for all facilities except beaches; and

2. Capable of reaching all parts of the facility bottom *[i]*;

(b) A vacuum system that utilizes the attachment of a vacuum hose to the suction piping through the skimmer may be provided *[i]*;

(c)1. If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting shall be provided:

a. Eight (8) to twelve (12) inches below the normal water level; and

b. With a cap or plug that is not removable by bathers.

2. Piping from this connection shall be:

a. To the suction side of the pump ahead of the hair and lint strainer;

b. At least one and one-half (1 1/2) inches in diameter; and

c. Equipped with a control valve near the junction with the pump suction line.

3. The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning *[i]*;

(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom *[i]* and

(e) Vacuum systems shall only be used when the facility is closed to bathers.

(6) Piping, skimmer, and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.

(b) All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.

(c) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping and ten (10) feet per second in pressure piping.

(d) Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.

(e) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;
2. Surge tank drain and overflow lines;
3. Pump discharge to waste lines; and
4. Gutter bypass to waste lines.

(7) Inlets.

(a) Each inlet shall be directionally adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except ~~that in~~ facilities equipped with skimmers ~~it~~ shall ~~have a velocity of flow be~~ in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots.

(d) Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat.

(e) Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.

(f) Inlets shall be placed completely around the pool with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool.

(g) The number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15).~~f~~ Any fraction thereof would represent one (1) additional inlet.

(h) Pools greater than forty-five (45) feet wide shall be equipped with floor inlets in a grid pattern located no more than seven and five-tenths (7.5) feet from a wall and no more than fifteen (15) feet apart. The grid ~~shall must~~ form a continuous loop with no reduction in loop pipe sizing.

(i) A minimum of two (2) inlets is required on all pools, holding tanks, and bathing facilities, regardless of size.

(j) At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.

(k) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.

(8) Outlets.

(a) All facilities, including holding tanks, shall be provided with a minimum of two (2) main outlets at the deepest horizontal point plumbed in parallel to permit the facility to be completely and easily drained.

(b) Openings and grates shall:

1. Conform to 15 U.S.C. 8003;

2. Be covered by a proper grating that is not removable by bathers;

3. Be at least four (4) times the area of the main outlet pipe;

4. Have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2) feet per second at maximum flow; and

5. ~~Have a~~~~The~~ maximum ~~grate opening~~ width of ~~[grate openings shall be]~~ one-fourth (1/4) inch.~~f~~

(c) Additional outlets shall be provided in all facilities where the width of the facility is more than sixty (60) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series.~~f~~

(d) A hydrostatic relief valve may be provided for in-ground swimming and diving pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer.~~f; and~~

(e) Main outlet piping shall be sized for ~~water removal~~ ~~[of the water through it]~~ at a rate of at least 100 percent of the design recirculation flow rate ~~and~~ at velocities specified in subsection (6)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(9) Perimeter overflow systems.

(a) Swimming and bathing facilities with a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system.

(b) A perimeter overflow system shall:

1. Extend completely around the facility;

2. Permit inspection, cleaning, and repair;

3. Be designed so that no ponding or retention of water occurs within any portion of the system;

4. Be designed to prevent entrapment of bathers or the passage of small children into an enclosed chamber;

5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;

6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;

7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate;

8. Discharge to the recirculation system;

9. Be provided with a minimum of two (2) outlet pipes that will not allow the overflow channel to become flooded when the facility is in normal use;

10. Require additional outlet pipes provided at one (1) per 150 lineal feet of perimeter overflow system or fraction thereof; and

11. Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.

(10) All facilities that have perimeter overflow systems shall have a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, surge tank, or a combination of these. Main drain piping shall terminate eighteen (18) inches above the surge tank floor and be equipped with a modulating valve and a positive shutoff valve. Surge capacity for a diatomaceous earth (DE) filter is measured eighteen (18) inches above the filter media and the bottom of the gutter pipe.

(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:

(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof with a minimum of two (2) skimmers provided, except for spas, holding tanks, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.

(b) Skimmers shall be located to minimize interference with each other.~~f~~

(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate.~~f~~

(d) Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow.~~f~~

(e) Each skimmer shall be provided with an equalizer line at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve and cover that conforms to 15 U.S.C. 8003.~~f~~

(f) ~~All overflow water shall pass through a basket that can be removed without the use of tools. A basket that can be removed without the use of tools and through which all overflow water must pass; and~~

(g) All pools not equipped with a perimeter overflow system shall have a smoothly contoured handhold coping not over two and one-half (2 1/2) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.

(12) All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:

- (a) Discharge through an air gap of at least six (6) inches to a

surge tank or a vacuum filter tank. If make-up water is added directly to the facility, the fill-spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and

(b) Through piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.

(13) Filtration.

(a) Filters shall comply with the following:

1. Pressure filters shall have:

a. Pressure gauges;

b. An observable free fall, or a sight glass installed on the backwash discharge line; and

c. A manual air-relief valve at the high point;

2. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;

3. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and

4. Filter media shall be listed as NSF approved.

(b) Each facility shall have separate filtration and treatment systems.

(c) Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day, except if the facility is closed for repairs or at the end of the swimming season.

(d) Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.

(e) At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.

(f) The filter system shall be designed with necessary valves and piping to permit filtering to the pool.

(g) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(h) Diatomaceous earth filters **shall comply with the following requirements: [;]**

1. The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoat;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water;

5. All filters shall be equipped for cleaning by one (1) or more of the following methods:

a. Backwashing;

b. Air-pump assist backwashing;

c. Spray wash;

d. Water pressure to wash vacuum filter; or

e. Agitation; and

6. Perlite may be used in filters listed by NSF for perlite, but it may not be substituted for diatomaceous earth without NSF listing.

(i) Vacuum sand filters **shall comply with the following requirements: [;]**

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute, whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow

water.

(j) Cartridge filters **shall comply with the following requirements: [;]**

1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;

2. Cartridge filters shall only be used on indoor pools;

3. The design filtration rate shall not exceed fifteen hundredths (0.15) gallons per minute per square foot of filter surface area; and

4. A clean duplicate set of cartridges shall be maintained at the facility.

(14) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control, **except as stated in paragraph (e) of this subsection.**

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of:

a. Eight (8) ppm or two and seven-tenths (2.7) pounds per day chlorine gas or its equivalent for each 10,000 gallons of pool volume for outdoor facilities; or

b. Three (3) ppm or one (1) pound per day for chlorine gas or its equivalent for each 10,000 gallons of pool volume for indoor facilities based on the turnover rates specified in subsection (2)(b) of this section. [;]

2. The equipment for supplying chlorine shall not be controlled by a day-date clock. [;]

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter unless the chlorine injection point is located within the surge tank. [;]

4. Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.50) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment. [;]

5. Supplemental NSF listed ultraviolet (UV) light disinfection systems **shall**:

a. **Shall** be provided on all splash pads with a recirculating water system;

b. **Shall** be installed on a bypass line; and

c. **Shall be** equipped with a flow indicator; and

d. May be used on other facilities as supplemental disinfection.

6. Ozone may be used as a supplement to chlorination or bromination. Ozonation equipment will be considered by the cabinet on a case-by-case basis. [; and]

7. No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than five hundredths (.05) ppm at all times either in the vicinity of the ozonator or at the pool water surface.

(c) If positive displacement pumps, **or [;] hypochlorinators, [;]** are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) Gas chlorinators shall only be used in a pre-existing facility and shall comply with applicable sections of 29 C.F.R. 1910.119.

(e) pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.

(15)(a) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of **[at least the following:**

1. a DPD (Diethyl-P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents **shall [are] not be acceptable; and**

2. **At least five (5) chlorine color standards and five (5) pH**

color standards].

(b) Test kits shall be used to determine the total residual chlorine either directly or by summation of free chlorine and combined chlorine test results. Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm.

(c) pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4).

(d) Both tests shall be accurate to within two-tenths (0.2) units.

(e) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.

Section 9. Operational Water Quality Standards. (1) Disinfectant residuals for swimming and diving pools, wading pools, water slides, and wave pools:

(a) Chlorine residual shall be maintained between one (1) and five (5) ppm as free available chlorine.

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant.

(c) Pools stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one **and five-tenths (1.5)(4)]** to five (5) ppm free available chlorine residual; and

3. Cyanuric acid concentration not to exceed fifty (50) ppm.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) ppm.

(2) Disinfectant residuals for spas:

(a) Chlorine residual shall be maintained between one (1) and five (5) ppm as free available chlorine;

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant; and

(c) If the level of chloramines exceeds two-tenths (0.2) ppm, superchlorination is required. During the superchlorination process and until **the[such] time that[as]** free chlorine levels return to five (5) ppm or less, the facility shall be closed.

(3) The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(4) Turbidity. Facility water shall have sufficient clarity at all times so that:

(a) A black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the pool; and

(b) The openings of the main outlet grate are clearly visible by an observer on the deck.**;**

(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 ppm, as determined by suitable test kits.

(6) Temperature.

(a) The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76) degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes as competition, physical therapy, or instruction of children. Variances may be approved if proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated**;** and that the variance will not jeopardize public health.

(b) Air temperature at an indoor facility shall be higher than the water temperature, except for spas.

(c) Water temperatures for any facility including spas shall not exceed 104 degrees Fahrenheit.

(d) All facilities with heated water shall have at least one (1) break proof thermometer located within the facility water in a conspicuous location. The thermometer shall be securely mounted to prevent tampering by bathers.

(7) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, temperature, and pH shall be checked at

least three (3) times daily with a greater frequency if bather load or climatic conditions warrant.

(b) Turbidity shall be checked daily, or more often as needed.

(c) **The following[Alkalinity, cyanuric acid (if used)]** shall be checked weekly, or more often as needed:

1. Alkalinity; and

2. Cyanuric acid, if used.

(8) All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.

Section 10. General Facility Operation and Maintenance. (1) All facilities shall be maintained:

(a) Free from sediment and debris; and

(b) In good repair.

(2) Decks shall be kept clean. Indoor decks shall be disinfected at least weekly.

(3) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other debris. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the perimeter overflow or skimmer system.

(4) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(5) Bather preparation facilities.

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily.

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair.

(c) Floors shall be maintained in a nonslip condition.

(d) Soap dispensers shall be filled and operable.

(e) Adequate supplies of toilet tissue, disposable hand drying towels, or suitable hand drying devices shall be maintained.

(6) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(7) Safety. All public swimming facilities shall have adequate enclosures that meet the specifications of Department of Housing, Buildings and Construction. Doors or gates in the facility enclosure shall be kept closed and locked if the facility is closed.

(8) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(9) Diving equipment, ladders, hand rails, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(10) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility.**;**

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day.**;** and

(c) Recirculation pumps. The pump shall not be throttled on the suction side **[(except the bottom drain line valve)]** during normal operation, **except for the bottom drain valve**, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(11) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened, as necessary, to remove air which collects in the filter**;** and following each backwash.**;** and

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) to one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(12) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(13) Flow meters. Flow meters shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(14) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(15) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(16) Chlorinated cyanurates. The use of chlorinated cyanurates ~~shall be~~ prohibited.

(17) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH; ~~and~~

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical; ~~and~~

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH; ~~and~~

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical; ~~and~~

(e) The cabinet shall be consulted if there are in the event of unusual pH problems including corrosion, scaling, or wide fluctuations in pH.

(18) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose and removed by the suction cleaner and filtration system.

(19) Miscellaneous chemicals.

(a) Chemicals other than approved disinfectants shall be used only with the advice and under the supervision of the cabinet; ~~and~~

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat, and in a clean, dry, and well-ventilated place that prevents unauthorized access to the chemicals; ~~and~~

(c) The chemicals used in controlling the quality of water shall be

used only in accordance with the manufacturer's instructions; ~~and~~

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) ppm.

(20) Equipment rooms shall comply with the following requirements; ~~and~~

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room that affords protection from the weather, prevents unauthorized access, has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access; and

(e) The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

(21) Maintenance of bathing beaches.

(a) Beach areas shall be maintained free of litter and water borne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.

(b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas; ~~and~~ and shall extend beneath the water of all wading and swimming areas; ~~and~~

(c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis and immediately after high water conditions for floating or sunken debris, obstructions at diving areas, and high water turbidity, which may present safety hazards to bathers.

Section 11. Facility Records. (1) The operator of each facility shall keep a daily record of information regarding operation of the facility on the DFS-352, Swimming Pool Log Sheet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records shall be kept showing daily or weekly results, as applicable, for:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level, ~~and~~ if applicable; ~~and~~

(c) Equipment malfunctions.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

Section 12. Personnel. (1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times when the facility is open for use.

(2) Lifeguards.

(a) Lifeguards shall be on duty at a facility that has 2,000 square feet or greater of water surface area at a rate of one (1) per 2,000 square feet or fraction thereof.

(b) Lifeguards shall be provided at all facilities, regardless of water surface area, that allow bathers seventeen (17) years of age or under to enter the facility area without a responsible adult present at a rate of one (1) lifeguard per 2,000 square feet of water surface area or fraction thereof.

(c) All facilities that are not required to provide lifeguards shall ~~must~~ post and enforce the following rules at all entrance points: "No Lifeguard on Duty" and "No person may enter the facility area alone or swim alone."

(d) ~~All beaches shall provide lifeguards at a rate of one (1) per 100 linear feet of beach front or fraction thereof, and a minimum of one (1) per attraction, with additional lifeguards provided to ensure all areas surrounding the attraction are clearly visible at all times.~~

~~(e) This shall be ~~is~~ the minimum lifeguard coverage acceptable under this administrative regulation. Additional lifeguards shall be provided if necessary ~~may be required~~~~

depending on bather load, bather activities, size, and configuration of the facility, and the amount of surface area for shallow and deep water areas, emergencies, and the lifeguard's ability to see bathers.

(e) A facility may submit an alternative lifeguard staffing plan that:

1. Has been certified by an independent third-party compliance specialist;

2. Designates the number of lifeguards necessary to ensure each lifeguard is capable of viewing the entire area of the assigned zone of patron surveillance; and

3. Ensures the lifeguard is able to reach the furthest extent of the assigned zone of patron surveillance within twenty (20) seconds.

(f) The alternative lifeguard staffing plan shall be:

1. On file with the Public Safety Branch within the Department for Public Health;

2. Submitted to the local health department of jurisdiction; and

3. Resubmitted if there is a change in:

a. The shape or size of the swimming pool;

b. The surrounding areas that would obstruct the lifeguard's view of the bottom of the pool; or

c. Ownership of the facility.

(g) Lifeguards shall be provided at all bathing beaches that allow bathers seventeen (17) years of age or younger without a responsible adult at a rate of one (1) per 100 linear feet of beach front or a fraction thereof. Bathing beaches that do not provide lifeguards shall post the following warnings: "No lifeguard on duty. Swim at your own risk. No person seventeen (17) years of age or younger may swim without a responsible adult present."

(h) A bathing beach that has an inflatable water attraction shall have a minimum of one (1) lifeguard per attraction, with additional lifeguards provided to ensure all areas surrounding the attraction are clearly visible at all times.

(3)(f) Lifeguards shall comply with the following:

(a)(1) Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;

(b)(2) Lifeguards shall be dressed in swimming attire; and

(c)(3) Lifeguards assigned to the supervision of the facility shall not be subject to duties that would:

1. [a.] Distract their attention from proper observation of persons in the facility area; [i.] or

[b.] [that would] Prevent immediate assistance to persons in distress in the water.

Section 13. Safety Equipment. (1) Facilities requiring lifeguards shall have a minimum of one (1) elevated lifeguard chair per on-duty lifeguard. A lifeguard chair shall be provided for each 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.

(2) Beaches requiring lifeguards shall provide/be provided with an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The chairs shall be located on the beach to provide a clear view of all areas under surveillance and to provide the quickest response time.

(3) One (1) unit consisting of the following lifesaving equipment shall be provided for 2,000 square feet of water surface area and an additional unit for each additional 2,000 square feet or fraction thereof:

(a) A U.S. Coast Guard approved ring buoy no more than fifteen (15) inches in diameter with a three-sixteenths (3/16) inch rope attached that measures one and one-half (1 1/2) times the maximum pool width;

(b) Rescue tubes may be used when lifeguards are present;

(c) A shepherd's hook securely attached to a one piece pole not less than twelve (12) feet in length; and

(d)(e) One (1) backboard with head immobilizer and at least three (3) straps, for back and neck injuries.

(4) Facilities limited to small spas, with less than 144 square feet

of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.

(5) In addition to subsection ~~three~~ (3) of this section, a beach shall provide the following lifesaving equipment:

(a) Paddle board or surfboard;

(b) At least one (1) lifeboat; [i.] and one (1) unit of lifesaving equipment; and

(c) A torpedo shaped buoy.

(6) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.

(7) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove ~~this[such]~~ equipment from its established location. This equipment at beaches shall be **centrally located in a conspicuous place that is readily accessible**~~[located at each lifeguard chair]~~, with the lifeboat required by subsection (5)(b) of this section being **located in the most central location**~~[at the most centrally stationed lifeguard chair]~~.

(8) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(9) All facilities shall provide an emergency automatic pump shut off located adjacent to the telephone.

(10)(a) All facilities shall have a non-pay landline telephone, **continuously connected to a power source and operational at all times**, capable of direct dialing 911 without going through a switchboard located on the deck that is readily accessible and conspicuously located. **A cordless telephone shall be prohibited.**

(b) A two (2) way radio communication system to a manned telephone system may be substituted at an isolated beach facility.

(c) The **address of the facility** and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

(11) All drownings and injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health.

(12)(a) A facility submitting an alternative lifeguard staffing plan pursuant to Section 12(2)(e) of this administrative regulation may submit a request for a variance to the safety equipment requirements of this section to the Environmental Management Branch in the Department for Public Health.

(b) The variance requested shall not affect the safe and healthful operation of the facility.

(c) Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of this section and that no safety or health hazard would be created if the variance is granted.

Section 14. Spectator and Bather Administrative Regulations. (1) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility shall be refused to a person:

1. Having any contagious disease ~~or~~ [i.] infectious conditions, such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;

2. Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and

3. Under the influence of alcohol, illegal substances, or exhibiting erratic behavior;

(b) [No] Food, drink, gum, tobacco, or vapor producing products shall not [product, will] be allowed, other than in specially designated

and controlled sections of the facility area:

(c) Personal conduct within the facility shall assure that the safety of self and others is not jeopardized;

(d) ~~[(No) Running and (no) boisterous or rough play shall not be permitted, [(except for supervised water sports) are permitted];~~

(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water ~~shall[is]~~ not ~~be~~ permitted;

(f) Glass, soap, or other material that creates hazardous conditions or interferes with efficient operation of the facility shall not be permitted in the facility or on the deck;

(g) All apparel worn in the facility shall be clean;

(h) Diving in shallow water ~~shall[is]~~ not ~~be~~ permitted;

(i) Caution shall be exercised in the use of diving boards; and

~~(j) Service animals may be allowed in the deck area but shall be excluded from the water[Animals shall be excluded from the facility area].~~

~~(3)(2) Due to the nature of bathing beaches, subsection (2)(c), and (f) of this section shall not apply. [Subsection (2)(a) and (b) of this section shall be enforced at the discretion of the facility operator, except subsections (2)(a)2. and 3., which shall be enforced at all facilities.]~~

~~(4)(3) In addition to the requirements of subsection (2) of this section, a caution sign shall be mounted adjacent to all spas and contain the following warnings:~~

~~"CAUTION~~

~~Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high or low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.~~

~~Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.~~

~~Do not use at water temperatures greater than 104 degrees Fahrenheit.~~

~~Do not use alone.~~

~~Unsupervised use by children is prohibited.~~

~~Enter and exit slowly.~~

~~Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.~~

~~Long exposure may result in nausea, dizziness, fainting, or death.~~

~~Keep all breakable objects out of the area.~~

~~Shower before entering the spa."~~

~~(5)(4) A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.~~

Section 15. Swimming Suits and Towels Furnished by Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.

Section 16. Facility Inspection. (1) Seasonal facilities.

(a) All owners or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this administrative regulation, except in instances where the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet may require one (1) of the full facility inspections to be performed prior to a facility's opening.]; and]

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation indoor facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.

(3) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(4) Facilities other than beaches shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring

basis. The monitoring inspection shall consist of:

(a) Disinfectant residual testing ~~[(free available residual)]~~ and combined disinfectant in ppm;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing, ~~[(if cyanuric acid stabilizers are used)];~~

(e) Turbidity assessment;

(f) Temperature testing, ~~[(if heated water facility)];~~

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris; and

(i) Other checks as necessary.

(5) Beaches shall be monitored once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation, bacteriological water sampling, and safety checks as necessary.

(6) The cabinet may make as many additional inspections and reinspections as necessary for the enforcement of this administrative regulation.

(7) When an agent of the cabinet makes an inspection of a public swimming and bathing facility, the findings shall be recorded on the DFS-349, Public Swimming and Bathing Facilities Inspection, or DFS-350, Public Swimming and Bathing Facilities Beach Inspection Report, and a copy provided to the facility owner or operator. The inspection report shall:

(a) Set forth any violation observed;

(b) Establish a specific and reasonable period of time for the correction of the violation observed; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 17. Water Sampling and Testing. (1) A water sample may be collected from facilities if inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak. ~~These samples, and~~ shall be submitted to the Division of Laboratory Services in an approved container and by approved sampling procedures for analysis.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

(a) Total coliform;

(b) E. coli; and

(c) Pseudomonas organisms.

(3) Multiple samples shall be collected at beaches to assure adequate representation of the entire facility water area.

(4) If a sample ~~tests[is]~~ positive ~~[test]~~ for a contaminant, the test shall be repeated within one (1) to seven (7) days.

(5) For a facility other than a bathing beach, no more than two (2) consecutive samples shall be positive for:

(a) More than two (2) coliform organisms per 100 milliliter (mL);

(b) Pseudomonas organisms; or

(c) E. coli.

(6) Beaches shall comply with the requirements of Section 4 of this administrative regulation prior to opening for the season and during the operating season.

(7) Additional samples may be requested to ensure compliance with this administrative regulation.

Section 18. Bacteriological Quality of Facility Water. (1) For facilities other than beaches, no more than two (2) consecutive samples shall:

(a) Contain more than 200 bacteria per mL;

(b) Have a positive confirmatory test for coliform organisms in any of the five (5) ten (10) mL portions of a sample or more than two (2) coliform organisms per 100 mL when the membrane filter test is used;

(c) Have a positive confirmatory test for pseudomonas organisms;

or

(d) Have a positive test for fecal coliform organisms.

(2) Beaches shall comply with the standards ~~established[set forth]~~ in Section 4(3)(a) of this administrative regulation.

Section 19. Conditions requiring Closure of a Facility and Enforcement Provisions. (1) The cabinet shall immediately order the closure of a facility and prohibit any person from using the facility by

written notice to the facility owner or operator if:

- (a) There is an immediate danger to health or safety;
 - (b) Violations of the Virginia Graham Baker Act;**
 - (c) The water does not conform to the bacteriological standards contained in this administrative regulation;
 - (d)(c)** An environmental survey of the area shows evidence of sewage, ~~for~~ other pollutants, or toxic materials being discharged to waters tributary to a beach;
 - (e)(d)** Turbidity levels of facility water do not meet the requirements of Section 9(4) of this administrative regulation;
 - (f)(e)** The disinfectant residual is outside the range prescribed in this administrative regulation;
 - (g)(f)** The pH is outside the range prescribed by this administrative regulation;
 - (h)(g)** The cyanuric acid level exceeds fifty (50) ppm;
 - (i)(h)** There is no pool operator available;
 - (j)(i)** There has been a fecal accident in the pool;
 - (k)(j)** ~~[In any instance where]~~ The owner, operator, an employee, or representative of the owner interferes with duly authorized agents of the cabinet ~~who bear,~~ **bearing** proper identification, in the performance of their duties;
 - (l)(k)** If recirculation systems, filtration systems, or disinfectant systems are not in operation, with exceptions for maintenance, ~~and~~ seasonal shut down; or
 - (m)(l)** If serious or repeated violations of any of the requirements of the administrative regulations are found.
- (2) The notice shall state the reasons prompting the closing of the facility, and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.
- (3) Any owner or operator affected by an order may request an administrative conference in accordance with 902 KAR 1:400.
- (4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.
- (5) If a source of sewage, pollution, or toxic material discovered as a result of an environmental survey is eliminated, the cabinet may authorize the reopening of a beach.
- (6) In all other instances of a violation of the provisions of this administrative regulation, or 902 KAR 10:121 for the nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation in question and afford a reasonable opportunity to correct ~~the violation[same]~~. An owner or operator who fails to comply with any written notice issued under the provisions of this administrative regulation or 902 KAR 10:121 shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of ~~the[such]~~ notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet, ~~by~~ by the owner or operator, ~~within the ten (10) day period.~~
- (7) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.
- (8) Any person whose facility has been closed may, at any time, make application for a reinspection for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.
- (9)(a) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400.
- (b) Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator, within the ten (10) day period.

Section 20. Existing Facilities and Equipment. (1) ~~[Notwithstanding the other provisions of this administrative regulation,]~~ Existing facilities and equipment being used prior to

August 1, 1996, that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if ~~the facilities and equipment:~~

- (a) Are** in good repair;
 - (b) Are,** capable of being maintained in a sanitary condition;
 - (c),** Meet facility water quality standards; ~~and~~
 - (d)** Create no health or safety hazard.
- (2) If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.

Section 21. Effect on Local Administrative Regulations. Compliance with this administrative regulation ~~shall~~ **does** not relieve any person from compliance with any other state or local laws dealing with pool operation and maintenance matters or zoning requirements that may also be applicable.

Section 22. Variances for Construction Requirements. (1) All facilities shall be constructed or remodeled in compliance with the provisions of ~~this/these~~ administrative ~~regulation/regulations~~, except that an applicant may request a variance ~~if the cabinet determines/in those cases where it is determined~~ that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require ~~adequate~~ proof from the applicant ~~documenting~~ that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.

Section 23. Incorporated by Reference. (1) The following material is incorporated by reference:

- (a) "DFS-349, Public Swimming and Bathing Facilities Inspection" ~~7/2022/5/2021~~;
 - (b) "DFS-350 Public Swimming and Bathing Facilities Beach Inspection Report" ~~7/2022/5/2021~~; and
 - (c) "DFS-352 Swimming Pool Log Sheet" 5/2021.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>.

[(1) "Accessible" means, if applied to a fixture, connection, appliance or equipment, having access to it, but may require the removal of an access panel, door or similar obstruction. "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

(3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor or other device, and the flood level rim of the receptacle.

(4) "Air induction system" means a system whereby a volume of air (only) is induced into hollow ducting built into a spa floor, bench, or other location. The air induction system is activated by a separate air power unit (blower).

(5) "Alkalinity or total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (p.p.m.).

(6) "Approved" means accepted or acceptable under the applicable specifications stated or cited in the administrative regulation or accepted as suitable for the proposed use by the State Building Code

(7) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(8) "Backwash cycle" means the time required to backwash the filter system thoroughly.

(9) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in U.S. gallons per minute per square foot (liters per minute per square meter) of effective filter area.

(10) "Bather" means any person using a public swimming and bathing facility, and adjoining deck or beach area for the purpose of therapy, relaxation, recreation, competitive water sports or events, or related activities.

(11) "Bather load" means the maximum number of persons which may use the swimming and bathing facility as defined in the State Building Code.

(12) "Body feed" means the continuous addition of controlled amounts of filter aid during the operation of a diatomite type filter to maintain a permeable filter cake. If added as a slurry, this may be referred to as a slurry feed.

(13) "Cabinet" means the Cabinet for Health Services and its authorized agents.

(14) "Cartridge" means a replaceable porous filter element which can be the depth type or the surface type:

(a) "Depth type cartridge" means a filter cartridge with media not less than three-fourths (3/4) inch (.18 cm) thick which relies on penetration of particulates into the media to achieve their removal and to provide adequate holding capacity for the cartridge; and

(b) "Surface type cartridge" means a filter cartridge with media less than three-fourths (3/4) inch (.18 cm) thick which relies on retention of particulates on the surface of the cartridge to achieve their removal.

(15) "Chemical feeder output rate" means the weight or volume of active ingredients delivered by a chemical feeder expressed in units of time.

(16) "Chemical feed rate indicator" means a mechanism which will produce reproducible results expressed in units of weight or volume of chemical per unit of time, or per unit of volume of water; the mechanism may be a direct reading instrument, or may require the use of a reference chart.

(17) "Circulation piping system" means the piping between the facility structure and the mechanical equipment.

(18) "Corrosion resistant" means capable of maintaining original surface characteristics under the prolonged influence of the environment in which it is used.

(19) "Design head" means the total head requirement of the circulation system at the design rate of flow.

(20) "Design rate of flow (design filter rate)" means the rate of flow in a system which is used for design calculation. (The volume of the facility in gallons divided by the number of minutes in the turnover time.)

(21) "Diving pool" means a pool designed and intended for use exclusively by divers.

(22) "Effective filter area" means:

(a) "Permanent media type" – the effective filter area is the cross-section area of the filter surface that is perpendicular to the flow direction;

(b) "Diatomaceous earth type" – the effective filter area of the septum is that part of the septum which will accept the full thickness of precoat and through which the design filter flow will be maintained during filtration; and

(c) "Cartridge filter" – the total effective filter area is that cartridge area which is exposed to the direct flow of water. This excludes cartridge ends, seals, supports, and other areas where flow is impaired.

(23) "Factor of safety" means the ultimate load divided by the safe load or the ultimate strength divided by the allowable stress.

(24) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance (a filter media or element):

(a) "Permanent media filter" means a filter that utilizes a media that can be backwashed and reused;

(b) "Diatomaceous earth filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that must be periodically replaced; and

(c) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.

(25) "Filter aid" refers to any means used to enhance the efficiency

of the filter media. Alum, as used on the bed of a sand filter, is also referred to as a filter aid.

(26) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

(27) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit. Filter elements usually consist of a septum and septum support:

(a) "Permanent filter media" means finely graded material (such as sand, anthracite, etc.) which removes suspended filterable particles from the water.

(b) "Nonpermanent filter media" means any type of finely graded media used to coat a septum type filter usually diatomaceous earth, processed perlite or similar material for the purpose of removing fine particulates from the water.

(28) "Filter waste discharge piping" means piping that conducts wastewater from a filter to a drainage system. Connection to drainage system is made through an air gap or other approved method.

(29) "Filtration rate" means the rate of water flow through a filter while in operation, expressed in U.S. gallons per minute per square foot (liters per minute per square meter) of effective filter area.

(30) "Flow balance valve" means a device to regulate the effluent from the skimmer housing of each of a combination of two (2) or more surface skimmers.

(31) "Flume" means an inclined channel which conveys the water and the bather from the top of the slide to the plunge pool of a water slide.

(32) "Friction loss" means the pressure drop expressed in feet (meters) of water or psi (pascals) caused by liquid flowing through the piping and fittings.

(33) "Handicap pool" means a swimming pool which is designed specifically for the use of persons who are physically or mentally disabled or impaired, and is equipped with devices, appliances, ramps and other means of assisted access to the pool.

(34) "Head loss" means the total pressure drop in psi (kilopascals) or feet (meters) or head between the inlet and the outlet of a component.

(35) "Hydrojet booster pump system" means a system whereby one (1) or more hydrojets are activated by the use of a pump which is completely independent of the filtration and heating system of a spa.

(36) "Hydrojets" means a fitting which blends air and water creating a high velocity, turbulent stream of air enriched water.

(37) "Indirect waste pipe" means a pipe that does not connect directly with the drainage system, but conveys liquid wastes by discharging into a plumbing fixture, interceptor, or receptacle which is directly connected to the drainage system.

(38) "Inlet fitting" means a fitting or fixture through which filtered water enters a pool or spa.

(39) "Listed" means equipment or materials included in a list published by a listing agency that maintains periodic inspection on current production of listed equipment or materials, and whose listing states either that the equipment or material complies with approved standards or has been tested and found suitable for use in a specified manner.

(40) "Main outlet" means the outlet fitting(s) at the bottom of a facility through which passes water to a recirculating pump. It is often referred to as a "main drain."

(41) "Multiport valve" means a valve for various recirculation related operations, which combines in one (1) unit the function of two (2) or more single direct flow valves.

(42) "National Sanitation Foundation (NSF)" is based at 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106. It publishes a list of manufacturers and their equipment which has been approved as having satisfied NSF standards.

(43) "Perimeter overflow systems" means a channel at normal water level which normally extends completely around the pool perimeter. Also, known as an overflow or scum gutter.

(44) "Person" means any individual, firm, association, club, organization, partnership, business trust, corporation, company, or any state or local governmental agency.

(45) "Precoat" means the process of depositing a layer of diatomaceous earth on filter septa at the start of a filter cycle.

(46) "Public swimming and bathing facility" means an natural or

artificial body or basin of water which is modified, improved, constructed, or installed for the purpose of swimming or bathing under the control of any person and includes, but is not limited to, the following:

- (a) Beaches;
- (b) Swimming pools, wading pools, wave pools;
- (c) Competition swimming pools and diving pools;
- (d) Water slides and spray pools; and

(e) Spas, therapeutic pools, hydrotherapy pools, and whirlpools. It includes those operated by communities, subdivisions, apartment complexes, condominiums, clubs, camps, schools, institutions, parks, mobile home parks, hotels, recreational areas, or similar public facilities. It does not include any of the above facilities which are at private single family residences intended only for the use of the owner and guests.

(47) "Public swimming and bathing facilities operator" means any "person" as defined above or any employees of that person who are delegated responsibility for the proper operation and maintenance of the facility.

(48) "Pump discharge pressure" means the actual gauge reading measured in psi taken at the discharge outlet of a pump.

(49) "Receptor" means an approved plumbing fixture or device of material, shape, and capacity to adequately receive the discharge from indirect waste piping, constructed and located to be readily cleaned.

(50) "Recirculation system" means the interconnected system traversed by the recirculated water from the pool until it is returned to the pool.

(51) "Residual chlorine" shall mean the amount of measurable chlorine remaining in water following chlorination and is composed of the following components:

(a) Free available residual chlorine shall mean the amount of chlorine which is available to inactivate microorganisms and which has not reacted with ammonia, nitrogenous material, and other material in swimming pool water;

(b) Combined residual chlorine (also called "chloramine") shall mean the amount of chlorine which has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds;

(c) Total residual chlorine shall mean the arithmetic sum of free available residual chlorine and combined residual chlorine; and

(d) The word "disinfectant" may be substituted for "chlorine" in the above.

(52) "Return piping" means that part of the piping between the filter and the facility through which passes the filtered water.

(53) "Separation tank" means a device used to clarify filter rinse or wastewater.

(54) "Septum" means that part of the filter element consisting of cloth, or closely woven fabric or other porous material on which the filter cake is deposited.

(61) "Surface skimmer" means a device designed to continuously remove surface film and water (and return it through the filter) as part of the recirculation system, usually incorporating a self-adjusting floating weir, strainer basket, a collection tank, and a means to prevent air lock of the pump. It is sometimes referred to as a "recirculating overflow," a "mechanical" or an "automatic skimmer."

(55) "Spa" means a special facility designed for recreational and therapeutic use, and which is not drained, cleaned, or refilled after each individual use. It may include, but not be limited to, units designed for hydrojet circulation, hot water, cold water, mineral bath, air induction bubbles, or any combination thereof. Common terminology for a spa includes, but is not limited to, "therapeutic pool," "hydrotherapy pool," "whirlpool," "hot spa."

(56) "Static suction lift" means the vertical distance in feet (meters) from the center line of the pump impeller to the level of water in the pool.

(57) "Spray pool" means an artificially constructed area over which water is sprayed but is not allowed to pool. Sprayed water flows to waste and is not recirculated.

(58) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(59) "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of the pump

and usually includes the following: main outlet piping, skimmer or gutter piping, vacuum piping, and surge tank piping.

(60) "Superchlorinate" means the addition to facility water of an amount of chlorine sufficient to produce a free available residual which is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(62) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.

(63) "Total discharge head" means the value in feet (meters) of water that a pump will raise water above its center line.

(64) "Total suction head" means the value in feet (meters) of water that a pump will lift by suction.

(65) "Total dynamic suction lift (TDSL)" means the arithmetical total of static suction lift, friction head loss, and velocity head loss working on the suction side of the pump.

(66) "Trimmer valve" means a flow adjusting device which is used to proportion flow among multiple skimmers on a single line.

(67) "Turnover time" means the time in hours or minutes, required for the circulation system to filter and recirculate a volume of water equal to the facility volume.

(68) "Vacuum piping" means the piping from the suction side of a pump connected to a vacuum fitting located at the facility and below the water level to which underwater cleaning equipment may be attached.

(69) "Velocity" means a measurement of the motion of liquids expressed in feet per second.

(70) "Wading pool" means a pool intended only for small children. The maximum depth is less than twenty-four (24) inches.

(71) "Water slide" means a slide which consists of one (1) or more flumes, a plunge pool, a pump reservoir, and water treatment facilities, where water is pumped to the top of the slide and allowed to flow down the flume to the plunge pool.

(72) "Wave pool" means a swimming pool designed for the purpose of producing wave action in the water.

(73) "Working pressure" means the normal operating pressure recommended by the manufacturer.

Section 3. Submission of Plans and Specifications for Approval.

(1) No person shall begin construction, or construct, or substantially change alter or reconstruct any public swimming and bathing facility until plans and specifications, with supporting design data as required in this administrative regulation for the proposed review of the plans, have first been submitted in quintuplicate (five (5) sets) to the cabinet through the Department of Housing, Buildings and Construction and have been approved in writing by all state or local agencies having jurisdiction. All construction shall be in accordance with approved plans. The front page of the plans shall contain the name of the swimming and bathing facility, location by city and county, name of its owner and name of the engineer, architect, or person preparing the plans. Plans submitted by an engineer or architect shall bear his seal. Plans and specifications on public swimming and bathing facilities constructed by the state or political subdivision, or on facilities designed for a bather load of 100 or more, shall be prepared by an engineer or architect registered in the State of Kentucky and comply with the provisions of KRS 322.010 and 323.010. Plans and specifications, reports and other information shall be submitted in form and content as may be specified by the cabinet.

(2) The plans shall be drawn to scale and accompanied by proper specifications to permit a comprehensive engineering review of the plans including the piping and hydraulic details and shall include:

(a) A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

(b) A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

(c) The specifications shall contain details on all treatment equipment, including performance ranges of pumps, chlorinators, chemical feeders, filters, strainers, lights, skimmers, inlet and outlet fittings, diving boards, safety equipment and other related equipment;

(d) A statement of the design, bather load expected to use the facility at any given time; and

(e) Drawing of equipment room showing placement of equipment.

(3) Owners shall keep one (1) set of approved plans available for inspection at the job site in the possession of the actual builder of the facility.

(4) Upon completion of the recirculation piping system and prior to such piping being covered with dirt or concrete, the owner or builder shall contact affected agencies for inspection.

(5) Upon completion of the swimming and bathing facility, a notarized statement certifying completion of the facility in accordance with the approved plans and specifications and this administrative regulation shall be submitted to the cabinet by the engineer, architect, or person who prepared plans, and shall be accompanied by a request for inspection prior to occupancy. The facility shall not be used until final inspection by affected agencies demonstrates compliance with this administrative regulation.

(6) Unless construction is begun within one (1) year from date of approval, the approval shall expire. Extension of approval may be granted upon written request to the cabinet.

(7) No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet and all other agencies having jurisdiction.

Section 4. Water Supplies. (1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Natural Resources and Environmental Protection Cabinet shall be provided.

(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility, and be capable of providing enough water to raise the water level in swimming, diving, or wave pools, and water slide/plunge pools at least one (1) inch in three (3) hours.

Section 5. Water Quality and Sanitary Requirements for Bathing Beaches. (1) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the bathing beach area and the watershed.

(2) Physical quality. The following characteristics shall not be present in the beach area or watershed:

(a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; and

(b) Hazardous substances being discharged into bathing beach water or watershed.

(3) Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:

(a) It shall meet the requirements of 401 KAR 5:031, Section 6, recreational waters, as adopted by the Natural Resources and Environmental Protection Cabinet. Bacterial levels exceeding those standards shall be considered sufficient grounds to require additional investigation, survey, special analyses, and correction of any problems determined to be causing the high counts. Subsequent evaluation and satisfactory bacteriological results shall be obtained before approval for construction will be issued; and

(b) There shall be no sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.

(4) Chemical quality. There shall be no discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

Section 6. Sewage and Wastewater Disposal. Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer. If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085, on-site sewage disposal systems administrative regulation.

(1) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the

ground surface without additional treatment. Such drainage shall not result in nuisance conditions, which create an offensive odor, or which produce a stagnant wet area, or which produce an environment for the breeding of insects;

(2) Wash or backwash water from sand filters or diatomaceous earth filters shall be discharged to public sanitary sewers, or if unavailable to a system approved by the cabinet.

Section 7. Refuse Disposal. (1) All refuse at a public swimming and bathing facility shall be disposed of in a manner approved by Natural Resources and Environmental Protection Cabinet.

(2) Refuse containers of approved design and construction, with tight fitting lids, adequate in number, shall be provided at readily accessible locations at all public swimming and bathing facilities. These containers shall be mounted upon an approved rack or holder in all outdoor locations, and shall be maintained to prevent the creation of a health or safety hazard.

(3) Refuse containers in rest rooms or bather preparation and dressing areas may be of open-top or swing-lid design, except in women's rest rooms where swing-lid or other covered top containers shall be required.

(4) Bulk refuse storage areas shall be designed, constructed, drained, and maintained to prevent rodent and vermin harborage, breeding sites, or insanitary conditions. Bulk refuse containers shall be of approved design and construction, with tight fitting lids, adequate in number, and shall be placed upon an impervious surface within a suitable enclosure to prevent access by animals.

(5) If the facility is not in use after seasonal operation or for any other reason, the facility shall not be allowed to accumulate debris, give off objectional odors, become a breeding site for insects, or create any other nuisance situation.

Section 8. Facility Design and Construction. (1) All public swimming and bathing facilities and attendant structures such as bathhouses, dressing rooms, or rest rooms, except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of the Kentucky State Building Code and the State Plumbing Code of the Department of Housing, Buildings, and Construction, Public Protection and Regulation Cabinet.

(2) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet. Within such limits of safe swimming there shall be no boating, underwater obstructions, or other hazards which may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.

(3) If diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.

(4) Depth markings and lane lines.

(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility if possible and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:

1. At the points of maximum and minimum depths;

2. At the point of change of slope between deep and shallow portions (transition point);

3. At intermediate two (2) feet increments of water depth; and

4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.

(b) Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet or seven and five-tenths (7.5) m as measured peripherally.

(c) Depth markers shall be in Arabic numerals at least four (4) inches (ten (10) cm) high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at

or above the water level, other means shall be used, so that markings shall be visible plainly to persons in the facility.

(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.

(e) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet). The line shall be placed one (1) foot toward the shallow end from where the break occurs.

Section 9. Facility Water Treatment Systems. (1) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities except bathing beaches. All system components shall bear the seal of approval of the National Sanitation Foundation (NSF). (Pumps greater than seven and five-tenths (7.5) HP which are not required to meet NSF testing standards shall be considered on a case-by-case basis.)

(2) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control shall be provided in the recirculation pump discharge piping.

Turnover Rate. The turnover rate shall be as shown in the following table:	
Type of Facility	Turnover Required
Diving Pools	8 hours or less
Wading Pools, Spas	30 minutes or less
Water Slides, Handicap Pools	2 hours or less
Vortex Pools	1 hour or less
All Other Pools	6 hours or less
Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.	

(b) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems. The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;
2. Seventy (70) feet for pressure sand or cartridge filters; or
3. Eighty (80) feet for pressure diatomaceous earth filters.

(c) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(d) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(e) A compound vacuum-pressure gauge shall be installed on the pump line. A vacuum gauge may be used for pumps with suction lift. A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(f) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(g) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are located downstream of the filter.

(3) Water heaters shall be installed at all indoor swimming and bathing facilities. If a water heater is installed, the following shall apply:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

(d) An automatic temperature limiting device with thermostatic control, which will prevent the introduction of water in excess of 100° Fahrenheit to swimming and diving pools and in excess of 104° Fahrenheit for spas shall be provided, and be accessible only to the facility operator;

(e) A pressure relief valve shall be provided and shall be piped to

within six (6) inches of the floor;

(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the applicable State Building Codes;

(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer's recommendations or the State Building Code;

(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 BTU's/hour input per square foot of pool water surface area; and

(j) All heaters shall meet the latest standards of applicable recognized testing agencies.

(4) A flow meter shall be located so that the rate of recirculation may be easily read. Flow meters shall be installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence.

(5) Vacuum cleaning system.

(a) A vacuum cleaning system shall be provided for all facilities except beaches, and small indoor spas designed for six (6) or less bathers. A vacuum cleaning system capable of reaching all parts of the facility bottom shall be provided;

(b) A vacuum system may be provided which utilizes the attachment of a vacuum hose to the suction piping through the skimmer. Vacuumed water must pass through the skimmer's strainer basket;

(c) If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting(s) shall be provided eight (8) to twelve (12) inches below the normal water level and be provided with a cap or plug. Piping from this connection shall be to the suction side of the pump ahead of the hair and lint strainer, shall be at least one and one-half (1 1/2) inches in diameter and be equipped with a control valve near the junction with the pump suction line. The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning;

(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom; and

(e) Vacuum systems are to be used only when the facility is closed to bathers.

(6) Piping, skimmer and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water. All piping, valves, or fittings shall be color coded, or suitably labeled, or marked to denote its purpose within the facility water treatment system.

(b) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping, and ten (10) feet per second in pressure piping. Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.

(c) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;
2. Surge tank drain and overflow lines;
3. Pump discharge to waste lines; and
4. Gutter bypass to waste lines.

(7) Inlets.

(a) Each inlet shall be flow adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except in facilities equipped with skimmers it shall be in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and permanently directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots. Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat. Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.

(d) Inlets for swimming and diving pools, wave pools, large spas, and water slide plunge pools shall be spaced as follows:

1. Inlets shall be placed completely around the pool, each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool; and

2. If inlets are to be placed on the bottom of the pool, the number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15), any fraction thereof would represent one (1) additional inlet.

(e) Inlets for wading pools, and small spas for six (6) or less bathers, shall be at least two (2) in number, and placed so as to meet the requirements of paragraph (c) of this subsection.

(f) At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.

(g) A continuous flume, tubing, or other arrangement near the pool water surface which serves as inlet supply piping and employs multiple "jet" inlets is approved provided the individual components of the system meet the requirements of paragraphs (a), (b) and (c) of this subsection and subsections (9)(a), (b) and (10) of this section.

(h) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.

(8) Outlets:

(a) All facilities shall be provided with a main outlet at the deepest point to permit the facility to be completely and easily drained. Openings shall be covered by a proper grating which is not removable by bathers without the use of tools, and which cannot entrap their fingers. Openings of the grating shall be at least four (4) times the area of the main outlet pipe and have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2) feet per second at maximum flow. The maximum width of grate openings shall be one-fourth (1/4) inch;

(b) Multiple outlets shall be provided in all facilities where the width of the facility is more than thirty (30) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series. All spas and wading pools shall have at least two (2) outlets;

(c) A hydrostatic relief valve may be provided for in-ground swimming and diving pools, wave pools, and water slide plunge pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer; and

(d) Main outlet piping shall be sized for removal of the water through it at a rate of at least 100 percent of the design recirculation flow rate at velocities specified in subsection (6)(b) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(9) Perimeter overflow systems:

(a) Swimming and bathing facilities other than pools designed and used exclusively for diving, having a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system. Swimming and bathing facilities less than 1,600 square feet in area and thirty (30) feet or less in width may use surface skimmers.

(b) A perimeter overflow system shall:

1. Extend completely around the facility;

2. Permit inspection, cleaning, and repair;

3. Be designed so that no ponding or retention of water occurs within any portion of the system; or the passage of small children into an enclosed chamber;

4. Be designed to prevent the entrapment of bather's arms, legs, and feet;

5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;

6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;

7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate. If the surge volume is to be stored in the perimeter overflow system, the system shall have the capacity to carry 100 percent of the design flow while maintaining the surge storage capacity;

8. Discharge to the recirculation system;

9. Be provided with sufficient drains and piping which will not allow the overflow channel to become "flooded" when the facility is in normal use; and

10. Have drain gratings with surface area at least equal to two (2)

times the area of the outlet pipe.

(10) All facilities which have perimeter overflow systems shall be provided with a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, in the perimeter overflow system, in a surge tank, or a combination of these. Valving shall be provided where necessary, to automatically retain water during periods of facility use and to discharge water during the periods of nonuse so that the proper operating water level in the facility is maintained at all times.

(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:

(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof; with a minimum of two (2) skimmers provided, except for small spas, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.

(b) Skimmers shall be located to minimize interference with each other;

(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate;

(d) The surface skimmer piping shall have both a trimmer valve and a separate valve in the equipment room to permit adjustment of flow;

(e) Each skimmer shall be provided with an equalizer line at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve;

(f) A basket which can be removed without the use of tools and through which all overflow water must pass, shall be provided; and

(g) Skimmer equipped swimming and diving pools, wave pools, water slide plunge pools, and large spas shall have a smoothly contoured handhold coping not over two and one-half (2 1/2) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.

(12) All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:

(a) Discharge through an air gap of at least six (6) inches to the facility to a surge tank, or a vacuum filter tank. If make-up water is added directly to the facility, the fill spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and

(b) Through piping with vacuum breaker, antisiphon or other protection as specified by the State Plumbing Code.

(13) Filtration:

(a) Filters shall comply with the following:

1. Pressure filters shall have pressure gauges;

2. Pressure filters shall have an observable free fall, or a sight glass shall be installed on the backwash discharge line;

3. Pressure filters shall have a manual air relief valve at the high point;

4. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;

5. All filters shall be designed so that they can be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer;

6. Filter media shall meet NSF specifications;

7. Each facility shall have separate filtration and treatment systems;

8. Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day except if the facility is closed for repairs or at the end of the swimming season; and

9. Individual filters shall be designed with necessary valves and piping to permit isolation of individual filters for repairs while other units are in service.

(b) Rapid sand or gravity sand filters:

1. Rapid sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover. Open gravity type filters shall be

designed for a filter rate not exceeding two (2) gallons per square foot per minute.

2. Filtering media shall consist of at least twenty (20) inches of graded, sharp filter sand with an effective size between four-tenths (0.4) and 0.55 mm and a uniformity coefficient not exceeding one and 1.75, supported by at least ten (10) inches of graded filter gravel. Anthracite with effective size of six-tenths (0.6) to eight-tenths (0.8) mm with a uniformity coefficient of not greater than one and eight-tenths (1.8) may be used in lieu of the sand. A reduction in gravel depth or an elimination of gravel may be permitted where equivalent performance and service are demonstrated.

3. At least twelve (12) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains which serve as overflows during backwashing.

4. The filter system shall be designed with necessary valves and piping to permit:

a. Filtering to pool; and

b. Individual backwashing of filters to waste at a rate of not less than fifteen (15) gallons per minute per square foot of filter area. A backwash rate of eight (8) gallons per square foot per minute shall be provided for anthracite filters;

5. Each filter shall be provided with an access opening of not less than a standard eleven (11) inch by fifteen (15) inch manhole and cover.

6. The filter tank and its integral parts shall be constructed of substantial material capable of withstanding continuous anticipated usage and shall be designed for a pressure safety factor of four (4) based on the maximum shutoff head of the pump. This shutoff head for design purposes shall in no case be considered less than fifty (50) pounds per square inch.

(c) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(d) Diatomaceous earth filters:

1. The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoat;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water; and

5. All filters shall be equipped for cleaning by one (1) or more of the following methods: backwashing; air pump assist backwashing; spray wash; water pressure to wash vacuum filter; or agitation.

(e) Vacuum sand filters:

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(f) Cartridge filters:

1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;

2. Cartridge filters shall only be used on indoor pools;

3. The design filtration rate shall not exceed 0.15 gallons per minute per square foot of filter surface area; and

4. A clean duplicate set of cartridges shall be maintained at the facility.

(14) Disinfectant and chemical feeders:

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a

chemical for pH control, except as stated in paragraph (e) of this subsection.

(b) Equipment capacity:

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of eight (8) p.p.m. (two and seven-tenths (2.7) lbs/day chlorine gas or its equivalent for each 10,000 gallons of pool volume) for outdoor facilities and three (3) p.p.m. (one (1) lbs/day for chlorine gas or its equivalent for each 10,000 gallons of pool volume) for indoor facilities based on the flow rates specified in subsection (2)(a) of this section;

2. The equipment for supplying chlorine shall not be controlled by a day-date clock;

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter;

4. Pot feeders for supplying bromo-chlorodimethylhydantoin sticks shall contain at least 0.50 pounds of bromo-chlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment;

5. Ozone may be used as a supplement to chlorination or bromination as required in subparagraph 1 or 4 of this paragraph. Ozonation equipment will be considered by the cabinet on a case-by-case basis for experimental use; and

6. No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than .05 p.p.m. at all times either in the vicinity of the ozonator or at the pool water surface.

(c) If positive displacement pumps (hypochlorinators) are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) Gas chlorinators:

1. The chlorine supply and gas feeding equipment shall be housed in a separate, relatively airtight room. The room shall be provided with an exhaust system which takes its suction not more than eight (8) inches from the floor and discharges out-of-doors in a direction to minimize exposure to toxic fumes. The fan shall be capable of producing one (1) air change per minute. Means for introducing a fresh air supply to the enclosure through appropriate openings such as filters, grill openings, or other similar openings, at a high point opposite the exhaust fan intake shall be provided. The room shall have a window at least eighteen (18) inches square, and shall have artificial lighting. Electrical switches for lighting and ventilation shall be outside and adjacent to the door. Scales for weighing chlorine cylinders in service shall be provided. Automatic changeover chlorinators may be substituted for scales.

2. Chlorine cylinders either full or empty shall be anchored, or chained in a vertical position. The valve protection hoods shall be kept in place, except when the cylinders are connected. Chlorine feed devices should be located directly on the tank if practical;

3. The chlorine feeding device shall be designed so that during interruptions of the flow of the water supply, gas feed is automatically terminated. In addition, the release of chlorine shall be terminated if the recirculation pump is shut off. If other than facility recirculated water is used, the supply line shall be equipped with an electric shut off valve wired to the recirculation pump and shall be equipped with an approved backflow preventer. If two (2) or more cylinders are in use, an automatic changeover valve shall be used;

4. Chlorinator vent lines shall be conducted to the out-of-doors similar to the chlorinator room exhaust system;

5. The gas chlorinator shall be the solution feed type capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere;

6. The water supply for the gas feeding equipment shall produce the flow rate and pressure required according to the manufacturer's specifications for proper operation of the equipment;

7. A self-contained breathing apparatus (SCBA) designed for use in a chlorine atmosphere and of a type approved by the Mine Safety and Health Administration (MSHA) or the National Institute for

Occupational Safety and Health (NIOSH), shall be provided. This SCBA shall have sufficient capacity for the purpose intended. In addition a written respirator program shall be provided and employees shall be trained in the use and maintenance of such equipment to insure operability and safety. The SCBA shall be kept in a closed cabinet, accessible without a key, and located outside of the chlorine room. Installation of chlorinator equipment, and its operation, shall be carried on by and under the supervision of personnel experienced with installation and operation of such equipment. A chlorine valve shut off wrench shall be kept on the cylinder valve stem that is in use; and

8. In the event of a chlorine leak, the fire department or an agency trained in the handling of chlorine spills shall be immediately contacted. The phone numbers of the fire department or above agency shall be posted on the outside of the chlorine room door.

(e) pH control feeders. At facilities with a volume greater than 100,000 gallons, or at facilities utilizing gas chlorine as a disinfectant, a chemical feeder of positive displacement type shall be installed for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate at least forty (40) gallons capacity shall be provided.

(f) Erosion type chlorine feeders shall be prohibited.

(15) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of at least the following:

(a) A DPD (Diethyl-P-Phenylene Diamine) colorimetric test kit shall be provided, which will determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents are not acceptable;

(b) There shall be At least five (5) chlorine color standards and at least five (5) pH color standards. Chlorine standards shall range from one-tenth (0.1) to three (3.0) p.p.m. and pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4), as a minimum.

Both tests shall be accurate to within two-tenths (0.2) units; and

(c) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 p.p.m.

Section 10. Operational Water Quality Standards. (1) Disinfectant residuals for swimming and diving pools, wading pools, water slides, and wave pools:

(a) Chlorine residual shall be maintained between one (1.0) p.p.m. and two and five-tenths (2.5) p.p.m. as free available chlorine.

(b) Bromine residual shall be maintained between one (1.0) p.p.m. and two and five-tenths (2.5) p.p.m. as free available disinfectant.

(c) Pools stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one and five-tenths (1.5) to two and five-tenths (2.5) p.p.m. free available chlorine residual; and

3. Cyanuric acid concentration twenty-five (25) p.p.m. to fifty (50) p.p.m.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) p.p.m.

(2) Disinfectant residuals for spas:

(a) Chlorine residual shall be maintained between one (1.0) two (2.0) p.p.m. and three (3.0) p.p.m. as free available chlorine;

(b) Bromine residual shall be maintained between two (2.0) p.p.m. and three (3.0) p.p.m. as free available disinfectant; and

(c) If the level of chloramines exceeds two-tenths (0.2) p.p.m., superchlorination is required. During the superchlorination process and until such time as free chlorine levels return to three (3) p.p.m. or less, the facility shall be closed.

(3) pH. The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(4) Turbidity. Facility water shall have sufficient clarity at all times to meet one (1) of the following:

(a) A black disc, six (6) inches in diameter, is readily visible when placed on a white field at the deepest point of the pool;

(b) The openings of the main outlet grate are clearly visible by an

observer on the deck; and

(c) For wading pools the bottom of the pool shall be clearly visible.

(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 p.p.m., as determined by suitable test kits.

(6) Temperature. The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76) degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes as competition, physical therapy, or instruction of children. Variances may be approved if proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated, and that the variance will not jeopardize public health. Air temperature at an indoor facility shall be higher than the water temperature, except for spas. In no instance will water temperatures for any facility including spas be permitted to exceed 104 degrees Fahrenheit. All facilities with heated water shall be provided with at least one (1) breakproof thermometer located within the facility water in a conspicuous location. The thermometer shall be securely mounted to prevent tampering by bathers.

(7) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, and pH shall be checked at least three (3) times daily with a greater frequency if bather load or climatic conditions warrant.

(b) Turbidity - daily, or more often as needed.

(c) Alkalinity, cyanuric acid (if used) - weekly, or more often as needed.

(d) Temperature:

1. Spas - daily, or more often as needed; and

2. All other indoor facilities - daily.

(8) All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.

Section 11. General Facility Operation and Maintenance. (1) Facility and facility area:

(a) All facilities shall be maintained free from sediment, lint, dirt, and hair. Cracks and other defects in the facility shall be repaired. The walls, ceilings, floors, and equipment shall be painted as often as necessary so that they are protected from deterioration. The bottom and sides of the facility shall be maintained so that they are free from deterioration;

(b) Decks shall be rinsed as necessary to be kept clean. Indoor decks shall be disinfected at least weekly. The walk areas, overflow gutters, counters, lockers, equipment, furniture, interior partitions, and walls shall be kept in good repair, clean, and sanitary; and

(c) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other obstacles which would restrict flow. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the perimeter overflow or skimmer system.

(3) Inlet fittings. Inlets shall be checked frequently to insure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(4) Bather preparation facilities.

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily; and

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair. Floors shall be maintained in a nonslip condition. Soap dispensers shall be filled and operable. Adequate supplies of toilet tissue, disposable hand drying towels, roll type cloth towels, or suitable hand drying devices shall be maintained.

(5) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(6) Safety. All public swimming facilities shall have adequate enclosures that meet the specifications of Department of Housing, Buildings and Construction. Doors or gates in the facility enclosure shall be kept closed and locked if the facility is closed.

(7) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(8) Diving equipment, ladders, hand rails, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(9) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility;

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day; and

(c) Recirculation pumps. The pump shall not be throttled on the suction side (except the bottom drain line valve) during normal operation, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(10) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened as necessary, to remove air which collects in the filter, and following each backwash; and

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) – one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(11) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(12) Flow meters. Flow meters shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(13) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(14) Gas chlorinators.

(a) Gas chlorinators shall be repaired only by a person trained in servicing these units. The facility operator shall determine the appropriate emergency personnel to contact in the event of a chlorine gas emergency and have the telephone number of said personnel conspicuously posted;

(b) Chlorine cylinders shall be stored indoors in the area designed for that purpose and away from a direct source of heat. Cylinders shall not be moved unless the protection cap is secured over the valve; and

(c) Chlorinator, gas line, injector, and cylinders shall be checked daily for leaks. Chlorine will produce a white smoke in the presence of ammonia. In case of a chlorine leak, corrective measures shall be undertaken only by trained persons wearing proper safety equipment. All other persons shall leave the dangerous area until conditions are again safe.

(15) Self-contained breathing apparatus (SCBA).

(a) A record shall be kept of SCBA usage to insure that the unit will be serviceable when needed. The SCBA shall be kept in a closed cabinet, accessible without a key, located outside of the room in which the chlorinator is located, and preferably outside the entrance to the equipment room; and

(b) The SCBA shall be serviced regularly as per manufacturer's recommendations.

(16) Positive displacement feeders.

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(17) Chlorinated cyanurates. The use of chlorinated cyanurates is prohibited.

(18) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH;

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical;

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH;

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical; and

(e) The cabinet shall be consulted in the event of unusual pH problems including corrosion or scaling or wide fluctuations in pH.

(19) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose, and removed by the suction cleaner and filtration system.

(20) Miscellaneous chemicals.

(a) Chemicals other than disinfectants shall be used only with the advice and under the supervision of the cabinet;

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat and in a clean, dry, and well-ventilated place which prevents unauthorized access to the chemicals;

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions; and

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) p.p.m.

(21) Equipment rooms.

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room which affords protection from the weather, prevents unauthorized access, and is of sufficient size for operation and inspection;

(b) The equipment room floor shall slope toward drains and shall have a nonslip finish;

(c) A hose bib with a vacuum breaker shall be installed in the equipment room;

(d) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected

from unauthorized access; and

(e) The equipment room and all other storage areas mentioned above shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

(22) Maintenance of bathing beaches.

(a) Beach areas shall be maintained free of litter and waterborne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.

(b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas, and shall extend beneath the water of all wading and swimming areas; and

(c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis, and immediately after high water conditions for floating or sunken debris, and obstructions at diving areas and high water turbidity which may present safety hazards to bathers.

Section 12. Facility Records. (1) The operator of each facility shall keep a daily record of information regarding operation including disinfectant residuals, pH, maintenance procedures, and recirculation; together with other data as may be required on form DFS-352 – Swimming Pool Log Sheet furnished by the cabinet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records, which include the following shall be kept showing daily or weekly results as applicable:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level (if applicable); and

(c) Malfunctioning of equipment.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

Section 13. Personnel. (1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times when the facility is open for use.

(2) Lifeguards.

(a) A lifeguard or Lifeguards shall be provided at all facilities, regardless of square footage which allow bathers sixteen (16) years of age or under to enter the facility area without a responsible person seventeen (17) years of age or older present

(b) All facilities which do not provide a lifeguard must post and enforce the following rule: "No person may enter the facility area alone or swim alone."

(c) If lifeguards are required, lifeguards shall comply with the following:

1. Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross, YMCA, or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;

2. More than one (1) lifeguard shall be on duty at large facilities or facilities with a large number of bathers. Lifeguards shall be provided at a ratio of one (1) per 200 bathers or one (1) per 2,000 square feet of water surface area, whichever is less;

3. Lifeguards shall be dressed in swimming attire; and

4. Lifeguards assigned to the supervision of the facility shall not be subject to duties that would distract their attention from proper observation of persons in the facility area, or that would prevent immediate assistance to persons in distress in the water.

Section 14. Safety Equipment. (1) Facilities other than beaches having an area of more than 2,000 square feet of water surface area shall be provided with an elevated lifeguard chair. An additional lifeguard chair shall be provided for each additional 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.

(2) Beaches shall be provided with an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The chairs shall be located on the beach to provide a clear view of all

areas under surveillance and to provide the quickest response time.

(3) The following lifesaving equipment shall be provided:

(a) A U.S. Coast Guard approved ring buoy not more than fifteen (15) inches in diameter to which shall be attached a three-sixteenths (3/16) inch rope of length one and one-half (1 1/2) times the maximum pool width;

(b) A life pole or shepherd's crook type of pole having blunted ends with a minimum length of twelve (12) feet; and

(c) One (1) plywood backboard with straps, made to the specifications of the American Red Cross for back and neck injuries.

(4) The equipment listed in subsection (3) of this section shall be considered as one (1) unit (except paragraph (c)) and shall be considered as adequate for 2,000 square feet of facility water surface area. An additional unit shall be provided for each additional 2,000 square feet or major fraction thereof.

(5) Facilities limited to small spas, of less than 144 square feet of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.

(6) Bathing beach facilities shall provide the following lifesaving equipment in addition to that listed in subsection (3) of this section:

(a) Paddle board or surfboard;

(b) At least one (1) lifeboat, containing one (1) unit of lifesaving equipment and outfitted to meet state water safety administrative regulations; and

(c) A torpedo shaped buoy.

(7) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent, which shall be kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.

(8) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove such equipment from its established location. This equipment at beaches shall be located at each lifeguard chair, with the lifeboat mentioned in subsection (6)(b) of this section being located at the most centrally stationed lifeguard chair.

(9) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(10) All facilities shall have a nonpay telephone on the premises which is readily accessible and conspicuously located; for isolated facilities two (2) way radio communication systems to a manned telephone system may be substituted. The telephone number of a police, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

(11) All drownings and injuries requiring hospitalization shall be immediately reported to the cabinet.

Section 15. Spectator and Bather Administrative Regulations. (1) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and shall be enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility is refused to all persons having any contagious disease, infectious conditions as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition which has the appearance of being infectious. Persons with excessive sunburn, abrasions which have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind are not permitted. A person under the influence of alcohol or exhibiting erratic behavior shall not be permitted in the facility area;

(b) No food, drink, gum, tobacco will be allowed in other than specially designated and controlled sections of the facility area;

(c) Personal conduct within the facility shall assure that the safety of self and others is not jeopardized. No running and no boisterous or rough play (except supervised water sports) are permitted;

(d) People in street shoes and other spectators are not allowed in the facility, on the deck, and in the "wet" areas of the bathhouse,

except those engaged in official duties;

(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water is not permitted;

(f) Glass, soap, or other material which might create hazardous conditions or interfere with efficient operation of the facility shall not be permitted in the facility or on the deck;

(g) All apparel worn in the facility shall be clean;

(h) Diving in shallow water is not permitted;

(i) Caution shall be exercised in the use of diving boards; and

(j) Animals shall be excluded from the facility area.

(2) Due to the nature of bathing beaches, subsection (1)(c), (d), and (g) of this section shall not apply. Subsection (1)(a) and (b) of this section shall be enforced at the discretion of the facility operator, except for parts dealing with those persons with excessive sunburn or those under the influence of alcohol or exhibiting erratic behavior, which shall be enforced at all facilities.

(3) In addition to the requirements of subsection (1) of this section, a caution sign shall be mounted adjacent to all spas which contain the following warnings:

CAUTION

Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high/low blood pressure should not enter the spa without prior medical consultation and permission from their doctor.

Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.

Do not use at water temperatures greater than 104 degrees Fahrenheit.

Do not use alone.

Unsupervised use by children is prohibited.

Enter and exit slowly.

Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.

Long exposure may result in nausea, dizziness, fainting, or death.

Keep all breakable objects out of the area.

Shower before entering the spa.

(4) A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.

Section 16. Swimming Suits and Towels Furnished by Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.

Section 17. Facility Inspection. (1) Seasonal facilities.

(a) All owners or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this administrative regulation except in instances where the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet, at its discretion, may require one (1) of the full facility inspections to be performed prior to a facility's opening; and

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation (indoor) facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.

(3) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(4) Facilities other than beaches shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of the following:

(a) Disinfectant residual testing (free available residual) and combined disinfectant in p.p.m.;

(b) pH testing;

(c) Total alkalinity testing;

(d) Cyanuric acid testing (if cyanuric acid stabilizers are used);

(e) Turbidity assessment;

(f) Temperature testing (if heated water facility);

(g) Review of operator's daily log;

(h) Visual scanning for algae or debris; and

(i) Other checks as necessary.

(5) Beaches shall receive monitoring inspections once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation and safety checks as necessary.

(6) The cabinet may make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(7) If an agent of the cabinet makes an inspection of a public swimming and bathing facility, he shall record his findings on an official cabinet inspection report form DFS-349 -- Public Swimming and Bathing Facilities Inspection or DFS-350 -- Public Swimming and Bathing Facilities Beach Inspection Report and provide the facility owner or the operator with a copy. The inspection report shall:

(a) Set forth any violation(s) if found;

(b) Establish a specific and reasonable period of time for the correction of the violation(s) found; and

(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 18. Water Sampling and Testing. (1) A water sample may be collected from facilities if inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak, and shall be submitted to the Health Services Laboratory or other laboratory licensed by the Natural Resources and Environmental Protection Cabinet for analysis. Samples shall be collected in approved containers and by approved sampling procedures.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

(a) Total coliform;

(b) Fecal coliform; and

(c) Pseudomonad organisms.

(3) Multiple samples may be collected at bathing beaches to assure adequate representation of the entire facility water area.

(4) Need for additional samples at other times shall be triggered by the results of monitoring inspections, reported disease outbreaks associated with the facility, or failure of previous samples to meet the standards outlined in Sections 5 and 19 of this administrative regulation. If a sample shows a positive test for contaminants as specified in subsection (2)(a), (b), and (c) of this section, the sample shall be repeated within one (1) to seven (7) days.

Section 19. Bacteriological Quality of Facility Water. (1) For facilities other than bathing beaches, no more than two (2) consecutive samples shall contain either:

(a) More than 200 bacteria per milliliter, as determined by the standard (thirty-five (35) degrees Centigrade) agar plate count;

(b) Show a positive test (confirmed test) for coliform organisms in any of the five (5) ten (10) milliliter portions of a sample or more than two (2.0) coliform organism per 100 ml when the membrane filter test is used;

(c) Show a positive test (confirmed test) for pseudomonas organisms; or

(d) Show a positive test for fecal coliform organisms.

(2) Bathing beaches shall comply with the standards set forth in Section 5(3)(a) of this administrative regulation.

Section 20. Conditions requiring Closure of a Facility and Enforcement Provisions. (1) If the cabinet finds any of the following conditions, it may immediately order by written notice the owner or operator to close the facility and to prohibit any person from using the facility:

(a) If conditions at a facility and appurtenances, including bathhouse facilities, upon inspection and investigation by a representative of the cabinet, create an immediate danger to health or safety;

(b) If the cabinet upon review of results of bacteriological analyses

of water samples collected from a facility, finds that the water does not conform to the bacteriological standards promulgated by the cabinet for proper swimming and bathing water quality;

(c) If an environmental survey of an area shows evidence of sewage or other pollutional or toxic materials being discharged to waters tributary to a beach creating an immediate danger to health or safety;

(d) If Turbidity levels of facility water do not meet the requirements of Section 10(4) of this administrative regulation;

(e) If in such cases as it is required, the presence of a satisfactory disinfectant residual, prescribed by the cabinet is absent;

(f) In any instance where the owner, operator, or any other employee or representative of the owner interferes with duly authorized agents of the cabinet, bearing proper identification, in the performance of their duties;

(g) If recirculation system(s), filtration system(s), or disinfectant system(s) are not in operation (with exceptions for maintenance, and seasonal shut down); or

(h) If serious or repeated violations of any of the requirements of the administrative regulations are found.

(2) The notice shall state the reasons prompting the closing of the facility and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order is entitled, upon written request on form DFS-212 - Request for Hearing to the cabinet, to a hearing in accordance with 902 KAR 1:400.

(4) If the conditions are abated or if the results of analyses of water samples collected from the facility, in the opinion of the cabinet, comply with the cabinet's bacteriological standards for acceptable water quality, or if the turbidity decreases to the permissible limit, or if the disinfectant residual reaches a satisfactory level as prescribed by administrative regulation, the cabinet may authorize reopening the facility. If sources of sewage, pollution, or toxic materials discovered as a result of an environmental survey are eliminated the cabinet may authorize reopening of such beach.

(5) In all other instances of violation of the provisions of this administrative regulation, including nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation(s) in question and afford a reasonable opportunity to correct same. If an owner or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the owner or operator shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the cabinet, by the owner or operator, within such ten (10) day period.

(6) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

(7) Any person whose facility has been closed may, at any time make application for a reinspection on form DFS-215 - Application for Reinstatement of Suspended Permits for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

(8) For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a hearing has been provided in accordance with 902 KAR 1:400. Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a hearing is filed with the cabinet by the owner or operator, within such ten (10) day period.

Section 21. Existing Facilities and Equipment. (1) Notwithstanding the other provisions of this administrative regulation, existing facilities and equipment being used prior to the effective date of this administrative regulation, which do not fully meet the design, construction, and materials requirements of this administrative

regulation, may be continued in use, if in good repair, capable of being maintained in a sanitary condition, meet facility water quality standards, and create no health or safety hazard.

(2) If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.

Section 22. Effect on Local Administrative Regulations. Compliance with this administrative regulation does not relieve any person from compliance with any other state or local laws, dealing with pool operation and maintenance matters, or zoning requirements which may also be applicable.

Section 23. Variances. (1) All facilities shall be constructed or remodeled in compliance with the provisions of these administrative regulations, except that an applicant may request and the cabinet may grant a variance in those cases where it is determined that the variance would not affect seriously the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.]

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and
Intellectual Disabilities
Division of Program Integrity
(As Amended at ARRS, July 14, 2022)

908 KAR 3:010. Patient's rights.

RELATES TO: KRS Chapters 202A, 202B

STATUTORY AUTHORITY: KRS 194.050, 202A.191, [202A.196,] 202B.060, EO 2004-726, SB 100 2022 Regular Session NECESSITY, FUNCTION, AND CONFORMITY: [EO 2004-726, effective July 9, 2004, created the Cabinet for Health and Family Services and placed the Department for Behavioral Health, Developmental and Intellectual Disabilities within the cabinet,] KRS 202A.191 and 202B.060 require [Chapters 202A and 202B, relating to the hospitalization of an individual with mental illness, developmental or intellectual disabilities, direct that] the Secretary for the Cabinet for Health and Family Services to promulgate [shall adopt rules and] administrative regulations that [which] insure proper administration and enforcement of KRS Chapter 202A and KRS Chapter 202B. [these chapters. The function of] This administrative regulation establishes requirements relating to [is to describe] the rights of an individual patient with mental illness, developmental or intellectual disabilities [patients] and requirements relating to [to establish rules for] the use of seclusion, restraint, and treatment under emergency situations concerning, in the treatment of] these patients.

Section 1. Definitions. [For purposes of this administrative regulation, the following definitions shall apply:]

(1) "Authorized representative" means the patient's attorney, guardian of a disabled adult, parent or guardian of a juvenile, or an individual authorized in writing by the patient to act in the patient's behalf.

(2) "Emergency situation" means the presence of a situation in which a patient's behavior in the present environment presents an immediate and substantial danger, or threat of immediate or substantial danger, to that person or to others, such as:

(a) Verbal threats or abuse toward other patients that creates a substantial risk that other patients may react in a manner that poses an immediate substantial danger, or threat of immediate substantial danger, to themselves or others, or that interferes in a substantial manner with the realistic opportunity of other patients to improve their own level of functioning through care and treatments in a hospital or residential treatment center; and

(b) Substantial deviation from an individual treatment plan that has been formulated with the mutual consent of the staff and the patient or approved pursuant to a court hearing, or the overt or repetitious violation of rules and procedures of the hospital or residential treatment center by the patient that presents an immediate and substantial danger to that person or to others if the patient has previously been fully informed as to the content of the patient's individual treatment plan and as to the rules and procedures which may be applicable to the patient's behavior.

(3) "Individual treatment plan" means a written document that[which] is a part of each patient's medical record and that contains information, such as[which must contain, but is not limited to]:

- (a) A statement of the diagnosis of the patient;
- (b) The short and long-range objectives of care and treatment;
- (c) The methods of treatment to be employed; and
- (d) The names of persons responsible for preparing and implementing the plan.

[(2) "Substantive changes" means those changes which reflect distinct changes in goals of treatment, methods to be employed and the names of persons primarily responsible for overall review or implementation of the individual treatment plan:

(a) Changes in the amount, frequency of administration, or specific type of medication shall not be considered substantive changes unless the changes involve introduction of new classes of medication including antipsychotic or anticonvulsant drugs;

(b) Changes in the frequency, duration, place or supervision of daily activities shall not be considered substantive changes unless the changes exclude participation in the activities previously identified in the treatment plan or initiation of new activities which could not be reasonably anticipated on the basis of short and long-term treatment goals.

(3) "Emergency situation" means the presence of a situation in which a patient's behavior in the present environment is such that it presents an immediate and substantial danger or threat of immediate or substantial danger to that person or to others.

(a) Behavior included in this definition extends to verbal threats or abuse toward other patients which creates a substantial risk that other patients may react in a manner which poses an immediate substantial danger or threat of immediate substantial danger to themselves or others, or which will interfere in a substantial manner with the realistic opportunity of other patients to improve their own level of functioning through care and treatments in a hospital or residential treatment center;

(b) Substantial deviation from an individual treatment plan which is formulated with the mutual consent of the staff and the patient or which is approved pursuant to a court hearing, or the overt or repetitious violation of rules and procedures of the hospital or residential treatment center by the patient which presents an immediate and substantial danger to that person or to others may also be considered as an emergency situation, provided the patient has previously been fully informed as to the content of the patient's individual treatment plan and as to the rules and procedures which may be applicable to the patient's behavior.]

(4) "Restraint" means the application of any physical device, the application of physical body pressure by another [in such a way as] to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to an individual with mental illness, developmental or

intellectual disabilities resident with the sole or primary purpose of controlling or limiting the physical activities of the patient or resident.

(5) "Seclusion" means the confinement of [a]n individual with mental illness, developmental or intellectual disabilities patient alone in a locked room.

(6) "Substantive changes" means those changes that reflect distinct changes in goals of treatment, methods to be employed, and the names of persons primarily responsible for overall review or implementation of the individual treatment plan, except for:

(a) Changes in the amount, frequency of administration, or specific type of medication, unless the changes involve introduction of new classes of medication, including antipsychotic or anticonvulsant drugs; and

(b) Changes in the frequency, duration, place, or supervision of daily activities, unless the changes exclude participation in the activities previously identified in the treatment plan or initiation of new activities that could not be reasonably anticipated on the basis of short and long-term treatment goals.["Authorized representative" means the patient's attorney, guardian of a disabled adult, parent or guardian of a juvenile, or an individual authorized in writing by the patient to act in the patient's behalf.]

Section 2. Right to be Adequately Informed. Each patient shall be adequately informed as to the patient's individual treatment plan.

(1) A written individual treatment plan shall be prepared and entered into the medical record of each patient. The treatment plan shall be subject to periodic review and shall be modified if there are[in the event of] substantive changes.;

(2) Each patient and the patient's authorized representative shall have access to a written copy of the patient's individual treatment plan.;

(3) Upon written request, each patient and the patient's authorized representative shall also be provided access to the patient's entire medical record. If[In the event that] full access to the medical record is refused, the patient shall be given a response in writing documenting the reasons for the[such] refusal.;

(4) If there are[In the case of] minors or other persons who appear incapable of reading or understanding a written treatment plan, a summary of pertinent features of the treatment plan may be presented orally, and the responses of parents, guardians, or other members of the immediate family shall be entered into the medical record, if these persons can be located.

Section 3. Right to Assist in Treatment Plan. Each patient shall have the right to assist in the planning of the treatment program.

(1) Each patient shall be informed of the contents of the patient's individual treatment plan, and the verbal, written, or behavioral responses to this information shall be entered in the medical records. If possible, the responses of a patient to the patient's treatment plan shall be used to review and modify its contents, such as[including, but not limited to,] the objectives and methods of treatment to be employed.;

(2) If there are[In the cases of] minors and other patients who appear incapable of reading or understanding their treatment plans, the responses of parents, guardians, or other members of the immediate family shall be entered into the medical records if these persons can be located.

Section 4. Right to Refuse Treatment.

(1) Patients may, under certain conditions, refuse treatment offered to them by the hospital. The refusal shall be clearly documented in the medical records.

(a) All patients, whether admitted voluntarily, or committed on an involuntary basis as the result of a hearing held pursuant to KRS Chapter 202A or 202B, shall have the right to refuse treatment. A patient who refuses treatment shall not[may] be forcibly treated unless the treatment is[only] pursuant to a court order after a de novo review as set forth in KRS 202A.196.

(b) If no court findings exist to support the implementation of a specific treatment plan that[which] is unacceptable to the patient,

the treatment may be implemented or continued only in an emergency situation documented in the medical records of the patient. The hospital or residential treatment center shall seek to develop an alternative plan of treatment acceptable to both the hospital or residential treatment center and the patient or secure a court order sanctioning forced treatment. If the hospital or residential treatment center and a voluntarily admitted patient cannot agree on an acceptable alternative plan of treatment, the hospital or residential treatment center may discharge the patient or pursue other remedies under law as may be necessary. If the hospital or residential treatment center prior to obtaining a judicial order for forced treatment determines that an emergency exists and that the patient presents an immediate and substantial danger or threat of immediate and substantial danger to self or others, the hospital or residential treatment center may intervene in the least intrusive manner possible while simultaneously seeking a de novo review.

(2) Refusal to participate in the treatment plan shall be clearly documented in the medical record and shall be honored unless an emergency situation exists or the activity has been reviewed and approved in a court hearing.

(3) In the absence of an emergency situation, the patient shall not be subjected to loss of any other privileges which the patient has at the time of refusal unless these[such] privileges are clearly documented in the individual treatment plan as being contingent upon participation in that area where participation has been refused.

(4) If the emergency situation persists for a period of more than seventy-two (72) hours, the treatment team shall evaluate the treatment plan and make changes necessary to meet the needs of the patient. If the patient refuses the revised treatment program, emergency treatment may continue as long as the emergency continues to be documented in the patient's record and the treatment review committee shall be informed and shall proceed according to law.

Section 5. Right to Personal Effects.

(1) Each patient shall have the right to maintain, keep, and use personal effects, items, or money except in the following instances:

(a) Retention of the item would be contrary to the patient's individual treatment plan;

(b) Retention of the item poses a threat of subjecting the patient or others to substantial physical harm;

(c) Retention of the item would subject it to a substantial risk of loss, theft, or destruction by the patient or other persons;

(d) Retention of the item would substantially impair the opportunity of the patient or other patients to benefit from care and treatment in the hospital; or

(e) Retention of the item is contrary to rules and administrative regulations of the hospital that[which] are reasonably related to the health and safety of the patient or other patients, except that the rules and administrative regulations shall be waived if[when] possession of the item is a part of the patient's individual written treatment plan.

(2) After written notice to a discharged patient, hospitals and residential treatment centers may dispose of all unclaimed personal items 180 days after discharge. Any proceeds from the sale of the items shall be used for the benefit of persons residing at the hospital or residential treatment center.

Section 6. Right to Receive Visitors.

(1) All patients shall have the right to meet with friends and relatives. This right shall not be waived except in the following instances:

(a) Exercise of the right would be inconsistent with the written provisions of the individual treatment plan; or

(b) An emergency situation exists.

(2) Each hospital or residential treatment center shall establish, and post conspicuously, rules governing visitors and visiting hours.

(3) All patients shall also have the right to refuse to meet with friends or relatives except that the right may be waived if the meetings are prescribed in the patient's individual treatment plan.

(4) Patients shall have the right to meet their authorized representative during nonvisitation hours, if suitable arrangements

are made in advance with the hospital or residential treatment centers.

(5) All patients shall have the right to name an essential personal care visitor as defined and established in 900 KAR 14:010.

Section 7. Right to Receive Compensation for Work Done. Each patient shall have the right to receive payment for work performed on behalf of the hospital.

(1) All patients shall be provided compensation as designated by the Fair Labor Standards Act, 201 U.S.C. 201-219, [appropriate federal and state statutes and regulations] for work performed at a hospital or residential treatment center where the work is of consequential economic benefit to the hospital or residential treatment center, any person, agency, or organization outside the hospital or the Commonwealth of Kentucky.

(2) The patient shall have the absolute right to refuse to perform any work, except activities of immediate and direct benefit to the patient and the patient's personal comfort.

Section 8. Right to De Novo Review. Involuntarily committed patients shall not[may] be treated with[provided] electroshock therapy or psychosurgery unless the treatment is[only] pursuant to a court order after a de novo review as set forth in KRS 202A.196.

Section 9. Use of Seclusion and Restraint. The use of seclusion and other mechanical restraints in hospitals or residential treatment facilities shall be limited and shall be carried out only with the[appropriate] precautions in this section.

(1) Seclusion and other mechanical restraints used for the sole or principal purpose of controlling behavior that[which] is the result of mental illness shall be instituted only if[when] part of an individual treatment plan or in an emergency situation.

(2) If use of seclusion or restraints is warranted under this section, the following rules shall apply:

(a) The medical records shall document the conditions that[which] prevail at the time of the use of these treatments and shall include the order of a licensed physician prescribing or justifying the treatment;

(b) Mentally ill persons placed in seclusion or subjected to the use of mechanical restraints, other than to prevent or treat self-inflicted injury or to treat a concomitant medical or surgical disorder, shall be individually observed [and] The need for continuing restraints or seclusion shall be determined by a hospital or residential treatment facility employee at least every fifteen (15) minutes. In addition, the patient shall be seen daily by a physician, and the reasons for continued use of this treatment procedure shall be documented in the medical records; and

(c) The patients shall be permitted access to toilet facilities at least every two (2) hours and to bathing facilities every forty-eight (48) hours;

(3) An[No] Order by a licensed physician for seclusion or use of mechanical restraints shall not be effective longer than twenty-four (24) hours after the treatment is implemented, and shall[must] be renewed if the treatment continues to be necessary, except if[where] the treatment is prescribed to prevent or treat self-inflicted injury or a concomitant medical or surgical disorder and if; provided that any renewal order states[shall state] the necessity for the continued treatment.

(4) [In no circumstances shall] Restraints or seclusion shall not be used, under any circumstances, principally or solely for the treatment of mental illness, except:

(a) As part of the documented individual treatment plan; or

(b) In response to a documented emergency, unless the treatment has received a review and approval by the court.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:310. Standards for child-placing agencies placing children who are in the custody of a state agency.

RELATES TO: KRS 2.015, 17.165, 17.500(8), 158.135(1)(c), 189.125, 194A.060, 199.011, 199.430(3), [199.470, 199.492, 199.493, 199.510, 199.520, 199.570, 199.572, 199.590, 199.640, 199.641, 199.645, 199.650-199.670,] 258.015, 258.035, 273.161(8), 311.720(12)(9), 311.840(3), 314.011(5), (7), [503.440(4), 527.100, 527.110, 600.020, Chapter 605[605.090(4)], 610.110(6), [640.125, 615.010-615.990, 620.030, 620.090(2), 620.140(1)(d), 620.230(3), [Chapter 625,] 16 C.F.R. 1219-1220, Parts 1632 and 1633, 45 C.F.R. Parts 160, 164, [1355.34,] 8 U.S.C. 1151, 42 U.S.C. 671, 42 U.S.C. [672,] 677(a), 14901-14954

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary[Secretary] of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.640(5)(a) requires the secretary[Secretary] of the Cabinet for Health and Family Services to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards for child-placing agencies placing children who are in the custody of a state agency.

Section 1. Definitions. (1) "Adequate supervision" means adult oversight of a child's activities with consideration of the child's past and current:

- (a) Incidents;
- (b) High risk behaviors; and
- (c) Needs.

(2) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.

(3) "Adoptive home" means a home in which the family has been approved by the child-placing agency to adopt a child.

(4) "Aftercare" means services provided to the child after discharge from a child-placing agency.

(5) "Applicant" means an individual or a family subject to approval by the child-placing agency as a:

- (a) Foster home; or
- (b) Adoptive home.

(6) "Board of directors" is defined by KRS 273.161(8).

(7) "Cabinet" is defined by KRS 199.011(3).

(8) "Case management" means a process whereby a state agency or child-placing agency assesses the individualized needs of a child or family, arranges for the provision of services, and maintains documentation of actions and outcomes.

(9)[(8)] "Child" means:

- (a) A child as defined by KRS 199.011(4) and 600.020(9);
- (b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or
- (c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(10)[(9)] "Child with medical complexity" means a child who is determined to have a medical condition pursuant to 922 KAR 1:350, Section 4(1)(b).

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

(12)[(11)] "College or university" means:

(a) An institution accredited by one (1) of the eleven (11) regional accrediting organizations recognized by the U.S. Department of Education, Office of Postsecondary Education;

(b) For a Kentucky institution, one (1) that is licensed by the Kentucky Council on Postsecondary Education or the Kentucky Board for Proprietary Education; and

(c) For an out-of-state institution, one (1) that is licensed in its home state if licensure is required in that state.

(13)[(12)] "Department" is defined by KRS 199.011(7) and 199.641(1)(b).

(14) "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of a child-placing agency.

(15)[(14)](13) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) and 600.020(30), if referring to a physical structure; or

(b) Any individual approved as a foster parent by the child-placing agency, if referring to an individual.

(16)[(15)](14) "Health professional" means a person actively licensed as a:

(a) Physician as defined by KRS 311.720(12);

(b) Physician assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(17)[(16)](15) "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker that meets the requirements specified in Section 4(3) of this administrative regulation.

(18)[(17)](16) "Independent living program" means a planned program that:

(a) Is licensed by the cabinet and designed to teach a child age eighteen (18)[sixteen (16)] or older life skills that enable a child to become self-sufficient; and

(b) Meets the requirements established[specified] in 922 KAR 1:340.

(19)[(18)](17) "Independent living services" means services provided to an eligible child, as described in Section 15[16] of this administrative regulation, to assist the child in the natural progression from adolescence to adulthood[transition from dependency of childhood to living independently].

(20)[(19)](18) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(21)[(20)](19) "Mental health treatment" means services provided to an individual determined to have emotional, mental, or behavioral problems.

(22)[(21)](20) "Placement" means:

(a) The physical relocation of a child removed from the child's home of origin with a provider of out-of-home services; or

(b) A foster or adoptive home that has been approved by completing an application process, home study, and required preparation.

(23)[(22)](21) "Program director" means the person responsible for supervising the day-to-day operation of the program.

(24)[(23)](22) "Respite care" means temporary care provided by another individual or family that meets requirements specified in Section 13 of this administrative regulation to meet the needs of the child or provide relief to a foster care parent, therapeutic foster care parent, or medically complex foster parent with the expectation that the child shall return to the foster home.

(25)[(24)](23) "Sex crime" is defined by KRS 17.500(8).

(26)[(25)](24) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and the individual's environment.

(25)] "Social services worker" means a person retained by a child-placing agency who meets the qualifications established[as specified] in Section 2(4)(c) of this administrative regulation.

(27)[(26)] "Supervision plan" means a written supplement to a child's ITP, developed pursuant to Section 6(7)(b)2 of this administrative regulation, that details a child-placing agency's roles and responsibilities to assure adequate supervision of a child in the agency's care, including those roles and responsibilities delegated to a foster home parent.

(28)[(27)] "Therapeutic foster care" is defined by KRS 158.135(1)(c).

(29)[(28)] "Therapeutic services" means clinical or supportive services provided to a child with severe emotional or behavioral needs.

(30)[(29)] "Treatment director" means an individual who meets the qualifications established~~[as specified]~~ in Section 2(4)(d) of this administrative regulation.

Section 2. Administration and Operation. (1) Licensing procedures.

(a) Licensing procedures for a child-placing agency shall be administered pursuant to 922 KAR 1:305.

(b) An independent living program shall be an optional component of the child-placing agency's license in accordance with 922 KAR 1:340.

(c) A child-placing agency shall obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet to provide private child care services, whichever is later. Accreditation shall be from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation;
2. The Joint Commission on Accreditation for Healthcare Organizations; or
3. The Commission on Accreditation of Rehabilitation Facilities.

(d) The cabinet shall revoke a license if a child-placing agency fails to:

1. Become accredited in accordance with paragraph (c) of this subsection; or
2. Maintain accreditation.

(e) The child-placing agency shall provide proof of accreditation to the Office of Inspector General, Division of Regulated Child Care:

1. Upon receiving initial accreditation; and
2. At the time of annual inspection for re-licensure.

(2) Board of directors. The child-placing agency shall have a board of directors, or an advisory board if the child-placing agency is a privately-held for-profit organization, that shall:

- (a) Consist of a minimum of seven (7) members;
- (b) Meet at least quarterly;
- (c) Cause minutes of the meeting to be taken and kept in written form;

(d) Be responsible for and have the authority to ensure the continuing compliance with the requirements established by this administrative regulation;

(e) Approve a mission statement;

(f) Establish and revise, when necessary, the child-placing agency's:

1. Purpose;
2. Objective;
3. Scope of services to be provided; and
4. Intake policy specifying the type of child to be accepted for care;

(g) Hire, supervise, and annually evaluate the executive director of the child-placing agency; and

(h) Delineate in writing the duties of the executive director.

(3) Executive director.

(a) The executive director shall:

1. Be responsible for the child-placing agency and its affiliates, pursuant to the child-placing agency's written policies and procedures;

2. Oversee all aspects of the child-placing agency; and
3. Report to the board, on a quarterly basis, the following:

- a. Evaluation of program services;
- b. Measurement of attainment of the objective established pursuant to subsection (2)(f)2 of this section;
- c. Staff training; and
- d. Incident reports.

(b) The criteria and process of the evaluation required in paragraph (a)3a of this subsection shall be approved by the board annually.

(c) If the executive director is not available on the premises or accessible by telephone, a designated staff person shall be responsible for the day-to-day operation of the child-placing agency.

(4) Staff qualifications.

(a) An executive director shall possess the following qualifications:

1.a. A master's degree from a college or university in any of the following human services fields:

- (i) Social work;
- (ii) Sociology;
- (iii) Psychology;
- (iv) Guidance and counseling;
- (v) Education;
- (vi) Religious education;
- (vii) Business administration;
- (viii) Criminal justice;
- (ix) Public administration;
- (x) Child-care administration;
- (xi) Nursing;
- (xii) Family studies; or
- (xiii) Another human service field related to working with families and children; and

b. Two (2) years of work experience in a human services program; or

2.a. A bachelor's degree with a major in a discipline designated in subparagraph 1 of this paragraph; and

b. Four (4) years of work experience in a human services program.

(b) A licensed child-placing agency shall have one (1) member of the social work staff designated as program director who shall hold:

1. A master's degree from a college or university in social work or in a discipline designated in paragraph (a)1 of this subsection; or

2.a. A bachelor's degree from a college or university in social work or in a discipline designated in paragraph (a)1 of this subsection; and

b. At least two (2) years of professional experience in working with a child or family.

(c) A social services worker shall:

1. Be responsible for planning and coordinating services to a child; and

2. Hold at least a bachelor's degree from a college or university in social work or a human services field.

(d) A treatment director shall:

1. Oversee the day-to-day operation of the treatment program, including:

- a. Reviewing all client treatment plans;
- b. Meeting a minimum of once monthly with each therapist providing treatment to a child placed in the care of the private child-placing agency to discuss the child's progress and individualized treatment plan;

c. Remaining accessible to therapists to provide consultation; and

d. Reviewing any critical incidents, including debriefs with involved staff;

2. Hold at least a master's degree from a college or university in a human services discipline; and

3. Have at least five (5) years of total experience in mental health treatment, with a minimum of three (3) years of experience in mental health treatment of children with emotional or behavioral disabilities and their families.

(e) 1. A child-placing agency contracting for the service of a social services worker not an employee of the child-placing agency shall obtain documentation that the social services worker meets the qualifications in paragraph (c) of this subsection.

2. An agreement for this provision of service shall be on file at the child-placing agency and shall specify the qualifications of the social services worker.

(f) The program director shall supervise social services workers.

(g) A treatment director shall carry out approval and evaluation

of services.

(h)1. Social services workers shall not carry a caseload of more than twenty (20) children.

2. If a social services worker carries a caseload of children in some combination of foster care, therapeutic foster care, medically complex foster care, or an independent living program, the allowable caseload for the social services worker shall be determined by:

a. Dividing the number of children in each placement type on the worker's caseload by the maximum caseload for the placement type to derive a percentage;

b. Adding each percentage calculated in clause a. of this subparagraph to derive a sum; and

c. Maintaining the sum derived in clause b. of this subparagraph at or below 100 percent.

(5) Personnel policy.

(a) A child-placing agency shall have and comply with written personnel policies and procedures.

(b) An employee shall:

1. Be at least eighteen (18) years of age;

2. Submit to a criminal background check in accordance with KRS 17.165 and a central registry check in accordance with 922 KAR 1:470; and

3. Submit to a new criminal background check in accordance with KRS 17.165 and central registry check in accordance with 922 KAR 1:470 once every two (2) years.

(c)1. An employee shall not be alone with a child if a central registry check has not yet been completed as required by 922 KAR 1:470.

2. If a substantiated finding of abuse, neglect, or exploitation of a child has been made against a person, a child-placing agency shall not employ the person or allow the person to volunteer in a position involving direct contact with a child.

3. The cabinet shall respond to allegations of abuse, neglect, or exploitation of a child in accordance with 922 KAR 1:330 and 922 KAR 1:480.

(d) A current personnel record shall be maintained for an employee that includes the following:

1. Name, address, Social Security number, date of employment, and date of birth;

2. Evidence of qualifications, including degree from a college or university, current registration, certification, or licensure;

3. Record of participation in staff development;

4. Record of performance evaluation;

5. Criminal records and central registry checks pursuant to paragraph (b)2 and 3 of this subsection;

6. Record of a physical exam related to employment, as specified in the child-placing agency's policies and procedures;

7. Personnel action;

8. Application for employment, resume, or contract; and

9. Evidence of personnel orientation.

(e) A child-placing agency shall have an ongoing staff development program under the supervision of a designated staff member.

(f) An employee under indictment, legally charged with felonious conduct, or subject to a cabinet investigation in accordance with 922 KAR 1:330 shall:

1. Be immediately removed from further contact with the alleged victim~~[a child]~~; and

2. Not be allowed to work with a child through their employment with the agency until:

a. ~~[A prevention plan has been written and approved by a designated regional cabinet staff;~~

b. ~~]~~ The person is cleared of the charge; or

b. ~~[c.]~~ A cabinet investigation results in~~[reveals]~~ an unsubstantiated finding, if the charge resulted from an allegation of child:

(i) Abuse;

(ii) Neglect; or

(iii) Exploitation.

(g) Unless the volunteer is a practicum student, a volunteer who performs a similar function as paid staff described in subsection (4) of this section shall meet the same requirements and qualifications.

(h) Practicum students and volunteers shall submit to a

background check and any other mandatory requirements listed in subsection (5)(b) and (c) of this section.

(i) A current personnel record shall be maintained for a practicum student or volunteer that includes the following:

1. Name, address, Social Security number, starting date, and date of birth;

2. Evidence of qualifications if the volunteer performs a similar function as paid staff; and

3. Criminal records and central registry checks pursuant to paragraph (h) of this subsection.

(6) Physical management. If a child-placing agency uses physical management, the agency shall have established guidelines and policies governing the use of physical management that shall be:

(a) Consistent with accreditation standards; and

(b) In accordance with 922 KAR 1:300.

(7) Notifications. A licensed child-placing agency shall provide written notification within one (1) week to the Office of Inspector General, Division of Regulated Child Care when there is a change in the following leadership staff:

(a) Executive director;

(b) Program director; or

(c) Treatment director.

Section 3. Interstate Placement. (1) Prior to accepting a child from another state or prior to placing a child outside Kentucky, a child-placing agency shall comply with:

(a) KRS 615.030 to 615.040~~[, Interstate Compact on Placement of Children]~~;

(b) KRS 615.010~~[, Interstate Compact for Juveniles]~~; and

(c) 42 U.S.C. 671(a)(23).

(2) A child-placing agency shall comply with subsection (1) of this section if a child placed with the child-placing agency visits or receives respite care in another state for a period to exceed:

(a) Thirty (30) days; or

(b) The child's school vacation period as ascertained from the academic calendar of the school.

(3) If an emergency placement of a child into a licensed child-placing agency is made, the placement source shall be responsible for compliance with KRS 615.030 to 615.040.

Section 4. Evaluation of an Applicant. (1) A child-placing agency's staff shall recruit a prospective foster or adoptive home.

(2) A child-placing agency shall:

(a) Complete a home study; and

(b) Approve the home prior to the placement of a child.

(3) Documentation of the home study shall include the following:

(a) A minimum of two (2) home visits for the purpose of conducting:

1. One (1) interview with each of the household members individually to assess each member's attitude toward the placement or adoption of a child; and

2. One (1) family consultation with all household members present to observe the functioning of the applicant's household, including interpersonal relationships and patterns of interaction;

(b) Proof of the applicant's:

1. Identity, such as a federally or state-issued photo identification card;

2. Age of twenty-one (21) years or older, unless an exception is granted pursuant to subsection (4) of this section; and

3. United States citizenship or legal immigrant status as described in 8 U.S.C. 1151;

(c) A statement for each member of the applicant's household that shall:

1. Be signed by a health professional who is not a member of the applicant's household; and

2. Verify that the individual has no illness or condition that would present a health or safety risk to a child placed in the applicant's home, which may include a communicable disease;

(d) A signed statement by a health professional who is not a member of the applicant's household regarding the applicant's physical ability to provide necessary care for a child.

(e)1. All household members shall disclose mental health and substance abuse issues, including any history of drug or alcohol

abuse treatment; and

2. The private child-placing agency shall require further documentation or evaluation to determine the suitability of the home if there is an indicator of current or past mental health or substance abuse issues;

(f) All adult household members demonstrate functional literacy;

(g) Verification that the applicant has a source of income separate from:

1. Foster care reimbursement; or

2. Adoption assistance;

(h) Documentation of references to include:

1.a. The name of three (3) personal references including:

(i) One (1) relative; and

(ii) Two (2) non-relatives.

b. The references required by clause a. of this subparagraph

shall:

(i) Be interviewed by the child-placing agency staff in person or by telephone; or

(ii) Provide letters of reference for the applicant; and

2. Two (2) credit references or a credit report;

(i) Verification that the applicant's financial stability has been assessed and approved in accordance with a child-placing agency's written policies and procedures;

(j) Documentation of an in-person or telephone interview with each adult child of the applicant, who does not live in the applicant's home, regarding the applicant's parenting history unless a documented exception exists and is approved by the program director due to inaccessibility;

(k) If applicable, verification from the applicant regarding a:

1. Previous divorce;

2. Death of a spouse; or

3. Present marriage;

(l) If the applicant does not have custody of the applicant's own child:

1. A copy of a visitation order, if applicable;

2. A copy of a child support order, if applicable; and

3. Proof of current payment of child support, if applicable;

(m) Proof that the child-placing agency performed background checks on the applicant and any member of the applicant's household as required by 922 KAR 1:490;

(n) Documentation that the applicant has access to:

1. Transportation that meets the child's needs, including restraint requirements pursuant to KRS 189.125;

2. School;

3. Recreation;

4. Medical care; and

5. Community facilities;

(o) If an applicant or household member shall be transporting a foster child:

1. Proof that the individual possesses a valid driver's license and has automobile or driver's insurance coverage; and

2. Documentation that the applicant or household member shall abide by passenger restraint laws;

(p) Documentation that the applicant's home:

1. Does not present a hazard to the health and safety of a child;

2. Is well heated and ventilated;

3. Complies with state and local health requirements regarding water and sanitation; and

4. Provides access to indoor and outdoor recreation space appropriate to the developmental needs of a child placed in the applicant's home;

5. Provides functioning kitchen facilities; and

6. Provides a functioning bathroom, including a:

a. Toilet;

b. Sink; and

c. Bathtub or shower.

(q) Verification that the requirements established by this paragraph are being followed.

1. More than four (4) children, including the applicant's own children, shall not share a bedroom;

2. Thorough consideration shall be given to age, gender, and background if children share a bedroom;

3. Children of different genders over the age of five (5) shall not

share a bedroom unless an exception has been granted to facilitate the placement of a sibling group or children who are related and share a sibling-like relationship, such as cousins, and no high-risk behaviors are present that would require separation;

4. A bedroom used by a child in the custody of a state agency shall be comparable to other bedrooms in the house; and

5. A foster parent shall not share a bedroom with a child in the custody of a state agency, unless prior approval is obtained from the state agency based on the needs of the child;

(r) Verification that an individual bed:

1. Is provided for each child in the home;

2. If the child is under age one (1), is a crib that meets the Consumer Products Safety Commission Standards pursuant to 16 C.F.R. 1219-1220;

3. Is age and size appropriate for the child; and

4. Has a mattress that:

a. Meets current Consumer Products Safety Commission Standards in 16 C.F.R. Parts 1632 and 1633;

b. Is in good repair; and

c. Has a clean, fitted sheet that shall be changed:

(i) Weekly; or

(ii) Immediately if it is soiled or wet;

(s) Verification that the following are inaccessible to a child:

1. Alcoholic beverages;

2. Poisonous or hazardous materials;

3. Ammunition and firearms in accordance with KRS 527.100 and 527.110;

4. An animal that presents a danger to a child; and

5. Medication unless an exception is granted pursuant to subsection (11)[(10)] of this section;

(t) Proof that the applicant has:

1. First aid supplies available and stored in a place easily accessible by the foster parent;

2. An accessible working telephone;

3. A working smoke alarm within ten (10) feet of each bedroom and on each floor of the home;

4. A working carbon monoxide detector in a home with gas heating or appliances; and

5. Any household animal vaccinated in accordance with KRS 258.015 and 258.035;

(u) If a business open to the public adjoins the applicant's household, consideration of potential negative impacts on the child and family, including:

1. Hours of operation;

2. Type of business; and

3. Clientele;

(v) Safety precautions related to an accessible swimming pool or body of water, if applicable; ~~and~~

(w) If an applicant was approved to foster or adopt a child by another child-placing agency or the cabinet and the applicant's home was closed:

1. Verification of the closure; ~~and~~

2. A statement to indicate whether the closure was at the request of the applicant or the agency; and

3. If applicable, verification that the requirement established in subsection (6)(a) of this section has been met; and

(x) If an applicant previously approved to foster or adopt by a child-placing agency or the cabinet was under a corrective action plan issued by another agency or the cabinet prior to closure:

1. The issue or issues that caused the issuance of a corrective action plan;

2. The applicant's response to the corrective action plan;

3. Agency rationale for the recommendation that the cabinet approve the applicant's home study; and

4. The cabinet's written denial or approval of the home study.

(4) Exception to subsection (3)(b)2 of this section shall be granted if the applicant is:

(a) Between eighteen (18) and twenty-one (21) years of age;

(b) A relative of the child to be placed in the applicant's home; and

(c) Able to meet the needs of the child to be placed in the applicant's home.

(5) For each potential applicant evaluated, a child-placing

agency shall keep a written record of the findings of the home study and the evidence on which the findings are based.

(6) If an applicant previously approved to foster or adopt by a child-placing agency or the cabinet was:

(a) Closed pursuant to Section 18 of this administrative regulation by another agency or the cabinet, the home shall not be ~~approved~~~~[reopened]~~ by an agency unless it has been ~~approved~~~~[reopened]~~ and operated as a cabinet foster home for a period of no less than one (1) year; or

(b) Under a corrective action plan issued by another agency or the cabinet prior to closure, the department shall review and approve the home study prior to the home being ~~approved~~~~[reopened]~~ by another agency.

(7)(a) A child-placing agency shall request written approval from the state agency with custody of the child, for the foster home to provide services as a:

1. Certified provider of Supports for Community Living in accordance with 907 KAR 12:010;
2. Therapeutic foster care provider for adults in accordance with 907 KAR 12:010;
3. Certified family child-care home in accordance with 922 KAR 2:100; or
4. Licensed child-care center in accordance with 922 KAR 2:090.

(b) An approved foster home shall not simultaneously be used as a licensed or certified health care or social service provider for a child in the foster home's care.

(8)(7)(a) An employee of the department who provides protection and permanency services shall be considered for approval as a foster parent or respite care provider for a child in the custody of the cabinet if prior approval by the commissioner or designee is granted in writing through the service region administrator in the region of the employment.

(b) If approval is granted, the private child-placing agency shall not place children from within the region of employment unless:

1. The employee is related to the child; or
2. The employee is determined to be fictive kin as the result of a relationship developed outside of employment prior to the child being placed in the custody of the cabinet.

(9)(8) An employee of the department who provides protection and permanency services may apply to adopt a child in the custody of the cabinet if the commissioner approves, in writing, the employee to adopt.

(10)(9)(a) A child-placing agency shall develop written policies and procedures regarding employees of the child-placing agency serving as:

1. A foster parent;
2. An adoptive parent; or
3. A respite care provider.

(b) Policies and procedures developed in accordance with paragraph (a) of this subsection shall address the prevention or appearance of:

1. A conflict of interest; or
2. Misuse of influence.

(11)(10) A child-placing agency may make an exception to subsection (3)(s)5 of this section if:

(a) The exception is documented in the ITP of a child placed in the foster or prospective adoptive home;

(b)1. The child is approved by a health professional to self-administer medicine under the supervision of the foster or prospective adoptive parent or other caretaker; or

2. Emergency access to the medication may be necessary to save the child's life, such as in the case of severe allergic reaction or asthma attack; and

(c) Measures are taken to prevent unauthorized access by another child in the same home.

(12)(11) If an applicant is approved as a foster home, adoptive home, or respite care provider by a state agency or another child-placing agency, a child-placing agency shall:

(a) Conduct a home study in accordance with subsections (2), (3), and (5) of this section; and

(b) Document that the applicant meets training requirements in accordance with Section 5, 7, 10, or 13~~[or 14]~~ of this administrative

regulation. If an applicant lacks training in accordance with this paragraph, the child-placing agency shall, prior to placement of a child in the home:

1. Provide training in accordance with Section 5, 7, 10, or 13~~[or 14]~~ of this administrative regulation; or
- 2.a. Develop an individualized curriculum to fulfill unmet training needs; and
- b. Document the applicant's compliance with the individualized curriculum.

Section 5. Orientation and Preparation of a Foster Home. [(1)] With the exception of training requirements ~~established~~~~[specified]~~ in 922 KAR 1:495 for a foster home that cares for a child in the custody of the cabinet, a child-placing agency shall:

(1)[(a)] Develop and maintain an orientation and preparation curriculum to be kept on file;

(2)[(b)] Provide a minimum of twenty-four (24) hours of orientation and preparation to a prospective foster parent, to include the following:

(a)[4-] Child-placing agency program description with mission statement;

(b)[2-] Information about the rights and responsibilities of the home ~~and the rights of the foster child~~;

(c)[3-] Background information about the foster child and the child's family, including information in accordance with KRS 605.090(1)(b);

(d)[4-] An example of an actual experience from a foster parent that has fostered a child;

(e)[5-] Information regarding:

- 1.[a-] The stages of grief;
- 2.[b-] Identification of the behavior linked to each stage;
- 3.[c-] The long-term effect of separation and loss on a child;
- 4.[d-] Permanency planning for a child, including independent living services;

5.[e-] The importance of attachment on a child's growth and development and how a child may maintain or develop a healthy attachment;

6.[f-] Family functioning, values, and expectations of a foster home;

7.[g-] Cultural competency;

8.[h-] How a child enters and experiences foster care, and the importance of achieving permanency; and

9.[i-] The importance of birth family and culture and helping children leave foster care;

(f)[6-] Identification of changes that may occur in the home if a placement occurs, to include:

- 1.[a-] Family adjustment and disruption;
 - 2.[b-] Identity issues; and
 - 3.[c-] Discipline issues and child behavior management; and
- (g)[7-] Specific requirements and responsibilities of a foster parent; and

(3)[(e)] Maintain an ongoing foster home preparation and training program that:

(a)[4-] Provides a minimum of ~~ten (10)~~~~[six (6)]~~ hours of foster home training annually; and

(b)[2-] Maintains a record of preparation and training completed.

[(2) Training provided in accordance with 922 KAR 1:495 may be utilized for a foster home that does not care for a child in the custody of the cabinet if the governmental agency or individual with oversight of the child approves the training.]

Section 6. Placement, Case Management, and Supervision of a Child in a Foster Home, Medically Complex Foster Home, or Therapeutic Foster Care Home. (1) A child-placing agency shall:

(a) Place a child only in an approved foster home; and

(b) Keep a child who has been committed to the Department of Juvenile Justice for the commission of a sex crime in a separate foster home or prospective adoptive home from a child committed to the cabinet in accordance with KRS 605.090(1), 620.090(2), and 620.230(3).

(2) A child-placing agency shall select a foster home for a child based upon the individual needs of the child, including:

(a) The child's assessment and ITP, if available;

(b) Any information concerning the child's needs in placement; and

(c) Measures to support the safety of the child, such as a placement restriction in accordance with subsection (1)(b) of this section or another child in the foster home.

(3) A child shall participate in the intake process to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the child's participation.

(4) Unless an exception is granted pursuant to subsection (6) of this section, the number of children residing in a foster home shall not exceed six (6), including the foster parent's own children living in the home.

(5) Unless an exception is granted pursuant to subsection (6) of this section, a child-placing agency shall have a maximum of two (2) children under two (2) years of age placed in the same foster home at the same time, including children placed in the custody of the cabinet and the foster parent's own children.

(6)(a) Justification for an exception to subsection (4) or (5) of this section shall be:

1. Documented in the foster parent file; and
2. Authorized by the program director because a plan is in place with the foster parent to ensure that the needs of all children in the home are met.

(b) For a foster home that cares for a child in the custody of the cabinet, the child-placing agency shall submit a DPP-112B, Private Child-Placing Agency Placement Exception Request, for an exception to subsection (4) or (5) of this section to designated cabinet staff prior to the placement documenting:

1. The reason the placement is in the best interest of the child; and
2. Specific support services to be provided.

(c) The number of foster children residing in a foster family home may exceed the limitation established in subsection (4) or (5) of this section with documentation on the DPP-112B in order to allow:

1. A parenting youth in foster care to remain with the child of the parenting youth;
2. Siblings to remain together;
3. A child with an established meaningful relationship with the family to remain with the family;
4. A family with special training or skills to provide care to a child who has a severe disability; or
5. Other circumstances noted in the DPP-112B and approved by the service region administrator or designee.

(d) If an exception to subsection (4) or (5) of this section is necessary for a placement to occur outside of normal business hours:

1. The child-placing agency shall verbally provide all information contained within the DPP-112B to designated cabinet staff prior to the placement;
2. A verbal approval from designated cabinet staff shall be required prior to the placement occurring; and
3. The completed DPP-112B shall be submitted on the first business day following placement.

(7) A child-placing agency shall:

(a) Assess a child to be placed in foster care;

(b) Within thirty (30) days of a child's placement, develop:

1. An ITP:

a. Based upon the individual strengths and needs of the child and, if appropriate, the child's family, that[which] addresses the:

- (i) Visitation, health, and educational needs of the child;
- (ii) Child's permanency goals and related objectives;
- (iii) Methods for accomplishing each goal and objective; and
- (iv) Designation of an individual or individuals responsible for completion of each goal and objective; and

b. With the child and the child's parent:

(i) That includes offering the child the opportunity to sign the ITP signifying the child's understanding; and

(ii) Unless a circumstance exists that[which] precludes engagement of the child or the child's parent from occurring and is documented in the child's case record; and

2. A supervision plan for the child that[which]:

a. Is attached to the child's ITP;

b. Identifies the current supervision needs of and expectations for the child based upon the child's recent and past:

(i) Incidents;

(ii) High-risk behaviors; and

(iii) Needs identified in the assessment conducted pursuant to paragraph (a) of this subsection;

c. Includes goals and objectives for the child's improvement with tasks assigned to the child-placing agency and foster home parent;

d. Is signed and dated by the social services[service] worker and foster home parent; and

e. Remains a part of the child's record;

(c) Review a child's ITP and supervision plan on a quarterly basis or more frequently as the child's needs or circumstances dictate;

(d) Have a written agreement with the foster home stating the:

1. Responsibilities of the:

a. Child-placing agency; and

b. Foster home; and

2. Terms of each placement;

(e) Require a foster home to certify, in writing, that supervision from the child-placing agency or the state agency, which has custody of the child, shall be allowed;

(f) Document a placement in the foster home file;

(g) Report immediately to the state agency that[which] has custody of the child if there is:

1. A hospitalization or life-threatening accident or illness;

2. An absence without official leave;

3. A suicide attempt;

4. Criminal activity by the child;

5. Death;

6. Possession of a deadly weapon by a child;

7. Change in address;

8. Change in the number of people living in the home; or

9. Significant change in the foster home, such as changes in health or income status of an individual living in the foster home;

(h) Establish policies and procedures for supervision of a foster home by a worker other than the social services worker assigned to the foster home, who meets qualifications specified in Section 2(4)(c) of this administrative regulation to:

1. Include:

a. Frequency of an in-home visit with the foster parent;

b. Means of supervision;

c. Methods of supervision; and

d. Personnel conducting the supervision;

2. Ensure a foster child's placement stability and safety; and

3. Be individualized, as needed, for the:

a. Child; or

b. Foster home;

(i) Identify and make available necessary supports to a foster home, including:

1. A plan for respite care in accordance with Section 13 of this administrative regulation;

2. Twenty-four (24) hour crisis intervention; and

3. A foster home support group;

(j) Assure that a child receives care and services, including independent living services:

1. In accordance with Section 15[46] of this administrative regulation; and

2. As prescribed by the child's needs as assessed in the child's ITP;

(k) Provide information to a foster parent regarding the behavior and development of the child placed by the child-placing agency;

(l) Inform the foster parent, in accordance with KRS 605.090(1)(b), of:

1. Inappropriate sexual acts or sexual behavior of the child as specifically known to the child-placing agency; and

2. Any behaviors of the child that indicate a safety risk for the placement;

(m) Document each effort to:

1. Protect the legal rights of the child's family and the child; and

2. Maintain the bond between the child and the child's family, in accordance with the child's permanency plan;

(n) Assure that a child shall have, for the child's exclusive use,

clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(o) Be responsible for monitoring the child's school progress and attendance;

(p) Secure psychological and psychiatric services, vocational counseling, or other services if indicated by the child's needs;

(q) Reassess and document quarterly, in the child's ITP, placement and permanency goals, including independent living services, in accordance with Section 15[46] of this administrative regulation;

(r) Conduct and document a face-to-face visit with the child at least once per month; and

(s) Maintain foster care records in accordance with Section 16[47] of this administrative regulation.

(8) Without prior notification to and written authorization from the Kentucky Interstate Compact Administrator, a child shall not be:

(a) Placed with a family that normally resides in another state; or

(b) Permitted to go with a person to take up residence in another state.

(9)(a) An approved foster home in use shall be evaluated at least every three (3) years for compliance with responsibilities listed in the written agreement described in subsection (7)(d) of this section.

(b) Results shall be recorded in the foster parent file.

(10) Factors that shall result in a review of a foster home shall include:

(a) Death or disability of a family member;

(b) Sudden onset of a health condition that impairs a foster parent's ability to care for a child placed in the home;

(c) Change in marital status or home address;

(d) Sudden, substantial decrease in, or loss of, income;

(e) Child birth;

(f) Use of a form of punishment that includes:

1. Cruel, severe, or humiliating actions;

2. Corporal punishment inflicted in any manner;

3. Denial of food, clothing, or shelter;

4. Withholding implementation of the child's ITP;

5. Denial of visits, telephone, or mail contacts with family members, unless authorized by a court of competent jurisdiction; and

6. Assignment of extremely strenuous exercise or work;

(g) A report of abuse, neglect, or dependency that results in a finding that is:

1. Substantiated; or

2. Reveals concern regarding the care of the child;

(h) If the foster parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense;

(i) An incident required to be reported in accordance with subsection (7)(g) of this section and Section 12(6) of this administrative regulation;

(j) Other factors identified by a child-placing agency that jeopardize the physical, mental, or emotional well-being of the child; or

(k) Failure to meet annual training requirements.

(11) The documentation of a review, specified in subsection (10) of this section, shall contain:

(a) Identifying information;

(b) Current composition of the household;

(c) Description of the situation that initiated the review;

(d) An assessment of the family functioning to determine if the child's needs are met; and

(e) Corrective action that may include a recommendation for closure of the foster home.

Section 7. Orientation and Preparation of a Therapeutic Foster Care Home. (1) A child-placing agency shall maintain the orientation and preparation curriculum on file.

(2) Unless a therapeutic foster care home cares for a child in the custody of the cabinet and is subject to training requirements specified in 922 KAR 1:495, a child-placing agency shall provide a minimum of thirty-six (36) hours of orientation and preparation for a prospective therapeutic foster care parent that shall incorporate the following topic areas:

(a) Child-placing agency program description with mission statement;

(b) Information about the rights and responsibilities of the therapeutic foster care home;

(c) Background information about a foster child and the child's family;

(d) An example of an actual experience of a therapeutic foster care parent that has fostered a child;

(e) Stages of grief;

(f) Behaviors linked to each stage of grief;

(g) Long-term effects on a child from separation and loss;

(h) Permanency planning for a child, including independent living services;

(i) Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment, including attachment disorder and associated behaviors;

(j) Family functioning, values, and expectations of a therapeutic foster care home;

(k) Changes that may occur in the home with placement of a child regarding:

1. Family functioning;

2. Family adjustment;

3. Identity issues;

4. Discipline issues and child behavior management; and

5. Family disruption;

(l) Specific requirements and responsibilities of a therapeutic foster care home;

(m) Behavior management;

(n) Communication skills;

(o) Skill teaching;

(p) Cultural competency;

(q) Behavior management de-escalation techniques;

(r) The dynamics of a child who has experienced sexual abuse or human trafficking; and

(s) The effect of chemical abuse or dependence by the child or the child's biological parent.

(3) A therapeutic foster care home shall receive:

(a) A minimum of twenty-two (22)~~twenty-four (24)~~ hours of annual training; or

(b) Training in accordance with 922 KAR 1:495 if the home provides care to a child in the custody of the cabinet.

(4) A child-placing agency that provides therapeutic foster care shall maintain an ongoing therapeutic foster care preparation and training program that:

(a) Provides training to meet requirements of subsection (2) of this section; and

(b) Maintains a record of preparation and training completed.

Section 8. Additional Requirements for Therapeutic Foster Care.

(1) A therapeutic foster care home shall accommodate the needs of a child who is unable to live with the child's own family and who:

(a) May benefit from care in a family setting; and

(b)1. Has clinical or behavioral needs that exceed supports available in a foster home; or

2. Is transitioning from group care as part of the process of returning to family and community.

~~(2) [Unless an exception is granted pursuant to subsection (3) of this section, the number of children residing in a therapeutic foster care home that does not care for a child in the custody of the cabinet shall be limited to a total of six (6) children, including no more than two (2) therapeutic foster care children.~~

~~(3) Justification for an exception to subsection (2) of this section shall be:~~

~~(a) Documented in the therapeutic foster care parent's file; and~~

~~(b) Authorized by the treatment director because a plan is in place with the foster care parent to ensure that the needs of all children in the home are met.~~

(4) Unless an exception is granted pursuant to subsection (5) of this section, the number of children residing in a therapeutic foster care home that cares for a child in the custody of the cabinet shall

be limited to a total of four (4) children, including no more than two (2) therapeutic foster care children.

(3) [(5)] To make a request for an exception to subsection (4) of this section, a child-placing agency shall follow the procedure set forth in Section 6(6)(b) of this administrative regulation.

(4) [(6)] A treatment director shall supervise a treatment team and shall participate in the development of the ITP and the quarterly case consultation.

(5) [(7)] A child-placing agency shall provide or contract, as specified in KRS 199.640(5)(a)2, for therapeutic services individualized for the child, as needed, at least two (2) times per month.

(6) [(8)] A therapeutic foster care parent shall be responsible for:

(a) Participation in the development of an assessment, ITP, and supervision plan as specified in Section 6(7) of this administrative regulation;

(b) Facilitation of in-home services provided by a social services worker at least two (2) times per month;

(c) Adequate supervision of the child and implementation of components of the ITP, including daily log documentation as specified in the ITP;

(d) Working with the child-placing agency to promote stability and avoid disruption for the child; and

(e) Working with the child-placing agency in the development of a plan for the smooth transition of the child to a new placement, if there is a disruption.

(7) [(9)] Except for a child who is the legal responsibility or in the custody of the cabinet or the Department of Juvenile Justice, a child-placing agency shall be responsible for:

(a) A preplacement conference, in a nonemergency placement, for the purpose of:

1. Developing permanency goals and a discharge plan for the child, including independent living services;

2. Developing a plan for the implementation of services;

3. Identifying the treatment goals; and

4. Developing a behavior management plan if applicable; and

(b) Inviting and encouraging attendance to the preplacement conference by:

1. The prospective therapeutic foster care home;

2. A respite care provider approved in accordance with Section 13(4) of this administrative regulation;

3. The child, if appropriate; and

4. The child's family.

(10)] The social services worker shall:

(a) Have a face-to-face visit with a child and therapeutic foster care parent on the day of the child's placement;

(b) Have another face-to-face visit with the therapeutic foster care parent or child within ten (10) calendar days of the child's placement;

(c) Telephone or visit, on a weekly basis, at least one (1) of the therapeutic foster care parents of each child on the therapeutic foster care worker's caseload;

(d) Visit a therapeutic foster care parent a minimum of two (2) times a month with at least one (1) visit being in the foster home;

(e) Visit the foster child face-to-face a minimum of two (2) times a month with at least one (1) visit in the therapeutic foster care home and one (1) visit outside the foster home;

(f) Carry a caseload of not more than twelve (12) therapeutic foster care children, taking into account:

1. Required responsibilities other than the case management of a child in foster care;

2. Additional support, contact, and preparation needed by a therapeutic foster care home, due to the extent of the needs of the child served;

3. The intensity of services provided to the child and the child's family; and

4. Caseload expectations established in Section 2(4)(h) of this administrative regulation;

(g) Conduct a quarterly case consultation, including the:

1. Foster home;

2. Child's public agency worker;

3. Child-placing agency treatment director and social services

worker; and

4. Child and the child's family of origin, to the extent possible;

(h) Identify the support needed by the foster family, including a:

1. Plan for respite care as provided in Section 13 of this administrative regulation;

2. Plan for twenty-four (24) hour on-call crisis intervention; and

3. Foster home support group;

(i) Recommend and prepare an aftercare plan for a child, prior to discharge from therapeutic foster care, to ensure a successful transition; and

(j) Document a quarterly case consultation and revision to a child's ITP as determined by the case consultations.

(8) [(14)] A child-placing agency shall:

(a) Meet requirements specified in Section 6(1) through (3) and (7) through (11) of this administrative regulation; and

(b) ~~Reevaluate~~~~Annually reevaluate~~ a therapeutic foster care home in accordance with Section ~~14~~~~15~~ of this administrative regulation.

Section 9. Child With Medical Complexity. (1) A child with medical complexity shall be:

(a) A child in the custody of the cabinet; and

(b) Determined by the cabinet to meet the child with medical complexity requirements established in ~~of~~ 922 KAR 1:350.

(2) The decision to accept a child with medical complexity shall be optional to a child-placing agency.

(3) If a child placed with a child-placing agency in a non-medically complex foster home becomes medically complex in accordance with subsection (1) of this section, the Division of Protection and Permanency director or designee and child-placing agency shall reevaluate the placement and ensure the child's needs can be met.

Section 10. Preparation of a Medically Complex Foster Home.

(1) A child-placing agency shall create a medically complex foster home only if the child-placing agency has:

(a) Staff meeting qualifications established in Section 2(4) of this administrative regulation supervising the home, who have received medically complex training in accordance with subsection (2)(b) and (c) of this section; and

(b) A liaison established with the cabinet.

(2) A foster home shall be approved to care for a child with medical complexity by a child-placing agency if the foster home:

(a) Includes a primary caregiver who is not employed outside the home, unless approved in writing by designated cabinet staff;

(b) Completes training as specified in 922 KAR 1:495, Section

4;

(c) Maintains certification in:

1. Infant, child, and adult CPR; and

2. First aid;

(d) Is located within a:

1. One (1) hour drive of a medical hospital with an emergency room; and

2. Thirty (30) minute drive of a local medical facility; and

(e) Is evaluated in accordance with Section 4 of this administrative regulation.

(3) If the cabinet determines that a child currently in the care of a foster parent approved by the child-placing agency is a child with medical complexity in accordance with Section 9(1) of this administrative regulation, then the cabinet shall prioritize the foster home's enrollment in training as specified in subsection (2)(b) and (c) of this section.

(4) An approved medically complex foster home shall receive reapproval, if the foster home:

(a) Annually completes ongoing training as specified by subsection (2)(b) and (c) of this section; and

(b) Continues to meet the requirements in Section ~~14~~~~15~~ of this administrative regulation.

(5) Except for a sibling group or unless approved by designated cabinet staff in accordance with the DPP-112B, more than four (4) children, including the medically complex foster parent's own children, shall not reside in a medically complex foster home, with no more than two (2) children being medically complex or requiring

therapeutic foster care.

(6) Unless an exception is approved by designated cabinet staff in accordance with the DPP-112B, a:

- (a) One (1) parent medically complex foster home shall not care for more than one (1) child with medical complexity; and
- (b) Two (2) parent medically complex foster home shall not care for more than two (2) children with medical complexity.

(7) If a placement would exceed a limit established by subsection (5) or (6) of this section, a child-placing agency shall request an exception in accordance with Section 6(6)(b) of this administrative regulation.

Section 11. Placement of a Child With Medical Complexity.

(1)(a) In addition to training required in Section 10(2)(b) and (c) of this administrative regulation, an approved medically complex foster parent shall receive training on how to care for the specific needs of a child with medical complexity placed in the home.

(b) The training shall be conducted by a health professional or a previous caregiver that was trained by a health professional.

(2) Unless an exception is granted by the director of the Division of Protection and Permanency or designee pursuant to subsection (3)(a) of this section, a child with medical complexity shall be placed in an approved medically complex foster home.

(3) A child-placing agency shall:

(a) Request an exception to subsection (2) of this section in accordance with Section 6(6)(b) of this administrative regulation;

(b) Provide case management services:

1. As described in Section 6(1) through (3), and (7) through (11) of this administrative regulation; and

2. In accordance with the child's:

- a. Health plan developed by designated cabinet staff;
- b. ITP; and
- c. Supervision plan;
- (c) Support the child's health plan developed by designated cabinet staff; and
- (d) Conduct a face-to-face visit with the child at least two (2) times per month.

Section 12. Expectations for a Foster Home, Therapeutic Foster Care Home, or Medically Complex Foster Home. An approved foster parent, medically complex foster parent, or therapeutic foster care parent shall:

(1) Provide a child placed by the child-placing agency with a family life, including:

- (a) Nutritious food;
- (b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;
- (c) Affection;
- (d) Life skills development;
- (e) Recreational opportunities;
- (f) Education opportunities;
- (g) Nonmedical transportation;
- (h) Opportunities for development consistent with the child's religious, ethnic, and cultural heritage;
- (i) Adequate supervision;
- (j) Independent living services for a child age fourteen ~~(14)[twelve (12)-years of age]~~ or older; and
- (k) Refraining from smoking in the direct presence of a child for whom their physician recommends, in writing, a smoke-free environment.

(2) Permit the approving[a] child-placing agency and staff of a state agency to visit the home;

(3) Share with the child-placing agency and, if applicable, staff of the state agency that[which] has custody of the child, information about the child placed by the child-placing agency;

(4) Notify the child-placing agency fourteen (14) calendar days prior if the home is approved to provide foster or adoptive services through another private child-placing agency or the cabinet;

(5) Notify the child-placing agency prior to:

- (a) Leaving the state with a child placed by the child-placing agency for more than twenty-four (24) hours; or
- (b) Allowing a child placed by the child-placing agency to be absent from the foster home for more than twenty-four (24) hours;

(6) Report immediately to the child-placing agency through which the child is placed if there is:

- (a) A hospitalization or life-threatening accident or illness;
- (b) An absence without official leave;
- (c) A suicide attempt;
- (d) Criminal activity by the child;
- (e) Death of any member in the household;
- (f) A child's possession of a deadly weapon;
- (g) Change in address;
- (h) Change in the number of people living in the home;
- (i) Significant change in circumstance in the foster home; or
- (j) Failure of the foster child or foster parent to comply with the supervision plan;

(7) Cooperate with the child-placing agency if child-placing agency staff arranges for a child, placed in the foster home by the child-placing agency, and the child's birth family regarding:

- (a) Visits;
- (b) Telephone calls; or
- (c) Mail;

(8) Surrender a child or children to the authorized representative of the child-placing agency or the state agency, which has custody of the child, upon request;

(9) Keep confidential all personal or protected health information as shared by the cabinet or child-placing agency, in accordance with KRS 194A.060 and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child's birth family;

(10) Support an assessment of the service needs, including respite care, and the development of an ITP, including the supervision plan, of a child placed by the child-placing agency;

(11) Participate in a case planning conference concerning a child placed by the child-placing agency;

(12) Cooperate with the implementation of the permanency goal established for a child placed by the child-placing agency;

(13) Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;

(14) Facilitate the delivery of medical care to a child placed by the child-placing agency as needed, including:

(a) Administration of medication to the child and daily documentation of the administration; and

(b) Physicals and examinations for the child;

(15) Treat a child placed by the child-placing agency with dignity;

(16) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030; and

(17) Comply with general supervision and direction of the child-placing agency or, if applicable, the state agency that has custody of the child, concerning the care of the child placed by the child-placing agency.

Section 13. Respite for Foster Care, Medically Complex Foster Care, or Therapeutic Foster Care. (1) The child-placing agency shall develop written policies and procedures to address the respite care needs of a child or a foster parent.

(2) Respite care shall not be used as a means of placement for a child.

(3) Respite care shall be in accordance with Section 3(2) of this administrative regulation.

(4) The child-placing agency shall not approve a respite care provider unless the provider meets requirements specified by Section 4(3)(b), (d), and (m) through (u) of this administrative regulation.

(5) A respite care provider shall:

(a) Receive, from the agency or foster parent, preparation for placement of a child, including:

- 1. Information in accordance with KRS 605.090(1)(b); and
- 2. Information regarding the supervision plan of the child;
- (b) Provide adequate supervision in accordance with the child's supervision plan;

(c)1. Give relief to a foster parent caring for a child; or

2. Provide for an adjustment period for a child;

(d) Meet the requirements of Section 6(4) through (6) of this administrative regulation; and

(e) Meet the requirements of Section 8 ~~(2)[(4)]~~ of this administrative regulation if the provider cares for a child requiring

therapeutic foster care.

(6) A respite care provider for a child with medical complexity shall:

- (a) Meet the requirements of Section 10(4)(b), (5), and (6) of this administrative regulation;
- (b) Receive training on how to meet the specific needs of the child with medical complexity from:
 1. A health professional; or
 2. The foster parent trained by a health professional; and
- (c) Maintain certification in:
 1. Infant, child, and adult CPR; and
 2. First Aid.

Section 14. ~~[Private Placement Process. Except for a child in the custody of or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, a child-placing agency shall follow the procedures established by this section if a private placement is conducted.~~

~~(1) For a child being placed with a child-placing agency, the child-placing agency shall obtain an:~~

- ~~(a) Agreement for voluntary care signed by the custodian; or~~
- ~~(b) Order from a court of competent jurisdiction placing the child into the custody of the child-placing agency.~~

~~(2) The child-placing agency shall:~~

- ~~(a) Complete an intake assessment of the strengths and needs of the child and the child's family of origin; and~~
- ~~(b) Ascertain the appropriateness of the referral for the child.~~

~~(3)(a) The child-placing agency shall develop an ITP individualized for a child and the child's family based on an individualized assessment of the child's and family's needs:~~

- ~~1. Within thirty (30) days of the child's placement with the child-placing agency; or~~
- ~~2. Prior to the child being placed out of state.~~

~~(b) An exception to the requirement specified in paragraph (a) of this subsection may be made for a child:~~

- ~~1. Under the age of twelve (12) months; and~~
- ~~2. With no extraordinary needs.~~

~~(c) The assessment shall be revised as needed.~~

~~(d) The assessment and ITP shall include the type and extent of services to be provided to the child and the child's family.~~

~~(e) Assessment of the child shall include consideration of the following history:~~

- ~~1. Behavioral health treatment;~~
- ~~2. Trauma;~~
- ~~3. Risk for harm to self or others; and~~
- ~~4. Past behaviors or safety issues that could increase the likelihood of placement disruption.~~

~~(4) Unless not in the best interest of the child, the child, parent, and foster parent shall be included in developing the assessment and ITP.~~

~~(5)(a) The foster home selected for placement shall be the most appropriate home based on the child's needs and the strengths of the foster family.~~

~~(b) The foster home shall be located as close as possible to the home of the family of origin, in order to facilitate visiting and reunification.~~

~~(6)(a) The social services worker and the foster parent shall work collaboratively to prepare the child prior to the placement.~~

~~(b) Unless a circumstance precludes preparation and the circumstance is documented in the case record, a child shall have a period of preparation prior to the placement in the foster home.~~

~~(7) The child-placing agency shall:~~

~~(a) Provide or arrange for services to support reunification for a child for whom family reunification is the goal;~~

~~(b) Assess and document the parent's capacity for reunification quarterly;~~

~~(c) Provide for review of the child in order to evaluate the progress toward achieving the child's permanency goal every six (6) months; and~~

~~(d) Assure that foster care continues to be the best placement for the child.~~

~~(8)(a) Services to the family of origin and to the child shall be adapted to their individual capacities, needs, and problems.~~

~~(b) A reasonable effort shall be made to return the child to the family of origin.~~

~~(9) Planning for the child regarding treatment program matters, including visitation, health, education, and permanency goals, shall be developed in collaboration with the:~~

- ~~(a) Family of origin;~~
- ~~(b) Treatment director;~~
- ~~(c) Social services worker; and~~
- ~~(d) Foster home.~~

~~(10)(a) The child-placing agency shall work with a foster home to promote stability and avoid disruption for a child, to include:~~

- ~~1. Services specified in Section 6(1) through (3), and (7) through (11) of this administrative regulation; and~~
- ~~2. Reevaluation of the foster home in accordance with Section 15 of this administrative regulation.~~

~~(b) A request for the removal of a child from a foster home shall be explored immediately and shall be documented by the social services worker.~~

~~(c) If disruption is unavoidable, the child-placing agency and foster home shall develop a plan for the smooth transition of the child to a new placement.~~

~~(11)(a) Preparation for the return of a child to the family of origin shall be supervised by a social services worker.~~

~~(b) The family shall participate in planning for the child's return.~~

~~(c) If regular contact with the child's family does not occur, a plan for the child's return shall include at least one (1):~~

- ~~1. Prior visit between the child and the family; and~~
- ~~2. Preliminary visit of the child to the child's family home.~~

~~(12) The child-placing agency shall recommend a plan for aftercare services for a child and the child's family.~~

Section 15. ~~Reevaluation of an Approved Adoptive Home Awaiting Placement or an Approved Foster Home.~~

(1) Every third year during the initial approval month, a child-placing agency shall:

- (a) Conduct a personal interview in the home with an approved:
 1. Adoptive home awaiting placement; or
 2. Foster home; and
- (b) Assess:
 1. Any change in the home;
 2. The ability of the home to meet the needs of a child placed in the home; and
 3. The home's continued compliance with the requirements of this administrative regulation in:
 - a. Section 4(3)(g), (i), and (k) through (u), and Section 4(5) through ~~(12)~~~~[(44)]~~ of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;
 - b. Sections 6(9)(a) and 12 of this administrative regulation, with regard to case management and expectations, if the home is approved as a foster home; and
 - c. (i) Sections 5(1)(c) or 7(3)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; and ~~[or]~~
 - (ii) 922 KAR 1:495 with regard to annual training if the home is approved to receive a child in the custody of the cabinet; and
 - d. ~~Section 18(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.]~~

(2) After initial approval, a foster parent, an adoptive parent awaiting placement, a respite care provider, or a member of a foster or adoptive parent's household shall comply with a child-placing agency's request for a statement regarding the parent, provider, or household member's general health and medical ability to care for a child.

~~[(3) If a prospective adoptive home is awaiting an international adoption, the child-placing agency shall conduct a reevaluation of the home once every eighteen (18) months.]~~

Section 15. ~~[Section 16.] Independent Living Services.~~ A child-placing agency shall:

- (1) Provide independent living services:
 - (a) To a child:
 1. In the custody of a state agency; and
 2. Who is fourteen (14)~~[(12)]~~ to twenty-one (21) years of

age;

(b) Directly or indirectly through a foster parent with whom the child is placed;

(c) As prescribed in the child's ITP; and

(d) In accordance with 42 U.S.C. 677(a); and

(2) Teach independent living:

(a) To a child:

1. In the custody of a state agency; and

2. Eighteen (18)[Sixteen (16)] years of age and older; and

(b) Developed in accordance with 922 KAR 1:340, Section 3(1)(a).

Section 16.[~~Section 17.~~] Maintenance of a Foster Care, Medically Complex Foster Care, or Therapeutic Foster Care Record.

(1) The child-placing agency shall maintain a record on each child and foster home, including medically complex foster homes and therapeutic foster care homes, if applicable.

(b) The child's record and the foster home record shall show the reason for placement change and steps taken to ensure success.

(c) A case record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 199.430(3), 199.640, and 45 C.F.R. Parts 160 and 164.

(2) The record of the child, including information of the child's family, shall include:

(a) Identifying information for child, parent, and foster home;

(b) Commitment order or custodian's consent for admission;

(c) Birth and immunization certificate;

(d) Educational record;

(e) Medical and dental record since placement;

(f) Social history and assessment;

(g) ITP and review;

(h) Supervision plan and updates to the plan;

(i) Permanency goals, including independent living services;

(j) Incident reports, including details of the child's behavior and supervision at the time of the incident;

(k) Monthly progress notes based on the ITP and supervision plan;

(l) Quarterly revisions to the child's ITP;

(m) Correspondence with the:

1. Court;

2. Family;

3. Department for Community Based Services; or

4. Department of Juvenile Justice;

(n) Discharge report; and

(o) Aftercare plan.

(3) The foster home's record shall include documentation relating to the:

(a) Orientation and preparation of the home, including all adult caregivers in the household;

(b) Required preparation hours and the topics covered;

(c) Placement of the child;

(d) Narrative summary of the initial and subsequent foster home's home study evaluation;

(e) Supervision of the foster home, including critical incidents;

(f) 1. Annual training requirements that are met in accordance with Section 5(3)[5(4)(e)] of this administrative regulation by the foster parent and all adult caregivers in the household; or

2. If applicable, annual training requirements in accordance with Section 7(3) or 10 of this administrative regulation;

(g) Background checks in accordance with Sections 4(3)(m) and 14(1)(b)3.a[15(4)(b)3.a] of this administrative regulation;

(h) Copy of any placement exceptions granted; and

(i) If applicable, copy of the written statement of the foster home's closure completed pursuant to Section 18(5)[22(5)] of this administrative regulation.

(4) A child-placing agency shall:

(a) Maintain a child or foster home's record for at least three (3) years;

(b) After three (3) years of inactivity:

[4.] Archive the record and maintain[have it transferred to one (1) of the cabinet's designated record centers; or

2. Maintain] the record in accordance with 725 KAR 1:061 within

the child-placing agency;

(c) Transfer the record to the cabinet, if:

1. The agency ceases operations; and

2. No other operational governing entity exists; and

(d) Make available all records maintained by the agency to the cabinet or its designee upon request.

Section 17.[~~Section 18.~~] Orientation and Preparation of an Adoptive Home for a Child Not in the Custody of the Cabinet. For a child not in the custody of the cabinet, a child-placing agency shall:

(1) Prepare and maintain the orientation and preparation curriculum on file;

(2) Provide orientation and preparation to a prospective adoptive home in accordance with the child-placing agency's policies and procedures to include the following:

(a) An example of an actual experience from a parent who has adopted a child;

(b) Challenging behavior characteristics of an adoptive older child;

(c) Referral resources for a developmental delay;

(d) Transition issues with focus on stages of grief, and a honeymoon period;

(e) Loss and the long-term effects on a child;

(f) Attachment and identity issues of the child;

(g) Cultural competency;

(h) Medical issues including referral resources;

(i) Family functioning, family values, and expectations of an adoptive home;

(j) Identification of changes that may occur in the family unit upon the placement of a child to include:

1. Family adjustment and disruption;

2. Identity issues; and

3. Discipline; and

(k) Financial assistance available to an adoptive home; and

(3) Ensure that an approved adoptive home awaiting the placement of a child receives adoptive home training annually in accordance with the child-placing agency's established policies and procedures.

Section 19. Adoption Placement Process For a Child Not in the Custody of the Cabinet. (1) A child shall not be placed for adoption until the:

(a) Adoptive home has been approved;

(b) Parental rights of the mother, legal or birth father, and putative father of the child, if not the same person as the legal father, are terminated by a circuit court order entered pursuant to KRS Chapter 625; and

(c) Child is placed with the child-placing agency for the purpose of adoption placement.

(2) A child's parent shall not be induced to terminate parental rights by a promise of financial aid or other consideration.

(3)(a) A child-placing agency licensed by the cabinet shall not use the authority authorizing the agency to place a child for adoption to facilitate an adoptive placement planned by a doctor, lawyer, clergyman, or person or entity outside the child-placing agency.

(b) The child-placing agency shall comply with provisions of 922 KAR 1:010.

(4) The child-placing agency shall obtain the following:

(a) A developmental history of the adoptive child to include:

1. Birth and health history;

2. Early development;

3. Characteristic ways the child responds to people and situations;

4. Any deviation from the range of normal development;

5. The experiences of the child prior to the decision to place the child for adoption;

6. Maternal attitude during pregnancy and early infancy;

7. Continuity of parental care and affection;

8. Out-of-home placement history;

9. Separation experiences; and

10. Information about the mother, legal father, and putative father, if not the same person as the legal father, and family background;

a. That may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology; and

b. Including an illness of the biological mother or father;

(b) A social history of the biological or legal parent, to include:

1. Name;

2. Age;

3. Nationality;

4. Education;

5. Religion or faith; and

6. Occupation;

(c) Information obtained from direct study and observation of the child by a:

1. Social services worker; and

2. Physician or other health professional;

(d) If indicated, information obtained from direct study and observation of the child by a:

1. Foster parent;

2. Nurse;

3. Psychologist; or

4. Other consultants; and

(e) Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of:

1. Determining the father's parental rights; and

2. Establishment of possible hereditary endowments.

(5) If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information, to the extent possible, from the existing case record.

(6) Prior to finalization of the adoptive placement, a licensed physician or other health professional shall make a medical examination to determine:

(a) The state of the child's health;

(b) Any significant factor that may interfere with normal development; and

(c) The implications of any medical problem.

(7) The condition under which an adoptive home agrees to accept the child shall be decided upon, prior to placement of the child. The written agreement between the child-placing agency and the adoptive home shall embody the following provisions:

(a) The adoptive home shall agree to:

1. Comply with KRS 199.470;

2. File an adoptive petition at a time agreeable to the adoptive home and the child-placing agency; and

3. Permit supervision by the child-placing agency in accordance with the child-placing agency's policies and procedures:

a. After placement; and

b. Preceding a final judgment of adoption by the circuit court;

(b) The child-placing agency shall be responsible for providing the adoptive home with written information regarding the child's:

1. Background;

2. Medical history;

3. Current behavior; and

4. Medical information necessary to comply with KRS 199.520(4)(a); and

(c) The adoptive home and the child-placing agency shall agree that the child may be removed from the placement, at the request of either party, before the filing of the adoptive petition.

(8)(a) Preplacement visits shall be arranged for the adoptive home and a child.

(b) The pattern and number of visits shall be based on the child's:

1. Age;

2. Development; and

3. Needs.

(9) During preparation, the child-placing agency shall discuss the child's readiness to accept the selected placement with the child, in accordance with the child's age and ability to understand.

(10)(a) Unless the child-placing agency and, if applicable, the state agency which has custody of a child belonging to a sibling group, determines that it is more beneficial for siblings to be placed

in separate adoptive homes, siblings who have had a relationship with each other shall be placed together.

(b) If siblings have been separated in placements:

1. The case record shall reflect a valid basis for the separation;

2. The decision to separate siblings shall be made by the executive director of the child-placing agency; and

3. Continued contact between siblings shall be maintained, if possible.

(11) A child-placing agency shall comply with Section 6(1)(b) of this administrative regulation during the process of placing a child in a prospective adoptive home.

Section 20. Supervision of an Adoptive Placement of a Child Not in the Custody of the Cabinet. (1) For a child not in the custody of the cabinet, the child-placing agency placing a child shall remain responsible for the child until the adoption has been granted. This responsibility shall involve the following:

(a) Two (2) meetings by the social services worker with the child and the adoptive home, including both adoptive parents if not a single parent adoption, one (1) visit of which shall be in the adoptive home before filing of the adoption petition;

(b) The continuation of case management, visits, and telephone contacts based upon the needs of the child until the adoption is legally granted; and

(c) Awareness of a change in the adoptive home including health, education, or behavior.

(2) Upon request of the cabinet, the child-placing agency shall:

(a) Provide information pursuant to KRS 199.510, as necessary to report to the court to proceed with adoption;

(b) Prepare and provide the original confidential report to the court; and

(c) Forward to the cabinet a copy of:

1. The confidential report that was provided to the court; and

2. Information required by KRS 199.520 and 199.572.

(3) If the court finds the adoptive home to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 21. Maintenance of Adoptive Case Record. (1) The child-placing agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of child-placing agency services for:

(a) A child accepted for care and the child's family; and

(b) An adoptive applicant.

(2) The case record shall contain material on which the child-placing agency decision may be based and shall include or preserve:

(a) Information and documents needed by the court;

(b) Information about the child and the child's family;

(c) A narrative or summary of the services provided with a copy of legal and other pertinent documents; and

(d) Information gathered during the intake process including the following:

1. A description of the situation that necessitated placement of the child away from the child's family or termination of parental rights;

2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the child-placing agency for the purpose of adoption;

3. Verification of the child's birth record and the registration number;

4. A copy of the child's medical record up to the time of placement;

5. A copy of the required evaluation of the adoptive placement;

6. Date of adoptive placement;

7. A statement of the basis for the selection of this adoptive home for the child;

8. A record of after-placement services with dates of:

a. Visits;

b. Contacts;

c. Observations;

d. Filing of petition;

e. Granting of judgments; and

f. Other significant court proceedings relative to the adoption;
and

9. Child's adoptive name[; and

~~10. Verification of preparation and orientation and annual training in accordance with Section 18 of this administrative regulation].~~

(3) If there is a need to share background information with a party to a completed adoption, or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the child-placing agency shall comply with KRS 199.570.

(4) Records on adoption that contain pertinent information shall be:

(a) Maintained indefinitely following final placement of a child;
and

(b) Sealed and secured from unauthorized scrutiny.

(5) A child-placing agency shall submit adoptive case records to the cabinet, if:

(a) The child-placing agency closes; and

(b) No other operational governing entity exists.

~~Section 18.[Section 22.]~~ Closure of an Approved Foster or Adoptive Home. (1) A foster or adoptive home shall be closed if:

(a) Sexual abuse or exploitation by a resident of the household is substantiated;

(b) Child maltreatment by a resident of the household occurs that is serious in nature or warrants the removal of a child;

(c) A serious physical or mental illness develops that may impair or preclude adequate care of the child in the home; or

(d) The home fails to meet applicable requirements of this administrative regulation in:

1. Section 4(3)(g), (i), and (k) through (u), and Section 4(5) through ~~(12)[(14)]~~ of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;

2. Sections 6(9)(a) and 12 of this administrative regulation, with regard to placement and case management, if the home is approved as a foster home; and

3. Sections 5, 7, or 10 of this administrative regulation, with regard to annual training, if the home is approved as a foster home. An exception to this subparagraph may be granted by the Division of Protection and Permanency director or designee for a foster parent caring for a child in the custody of the cabinet if it is in the best interest of a child placed in the foster home to allow the exception. If an exception is approved for a foster parent caring for a child in the custody of the cabinet, a new or additional child shall not be placed in the home until the foster parent has met the training requirement[; and

~~4. Section 18(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.]~~

(2) A foster or adoptive home may be closed:

(a) In accordance with the terms specified in the written agreement between the child-placing agency and the foster or adoptive home; or

(b) In accordance with the terms specified in the written contract between the cabinet and the child-placing agency, if applicable.

(3) If closure of an approved foster or adoptive home is necessary, a child-placing agency shall:

(a) State the reason for the closure in a personal interview with the family unless the family refuses or declines the personal interview[; and]

(b) Document the reason in the foster or adoptive home's case record; and

(c) Submit closure information, including the cause for closure, in the foster care registry maintained by the department within fourteen (14) days.

(4) A child-placing agency shall confirm the decision to close a home in a written notice to the foster or adoptive parent. The notice shall be provided within fourteen (14) calendar days of the interview with a foster or adoptive parent. If the foster or adoptive parent refuses to be interviewed, the notice shall be provided within fourteen (14) calendar days of the foster or adoptive parent's refusal.

(5) The written notice shall include:

(a) Date of approval and termination; and

(b) Indication of whether the closure was at the request of the foster parents or the agency.

~~Section 19.[Section 23.]~~ Foster Care Registry. (1) A child-placing agency shall check the foster care registry for a foster home applicant prior to approval.

(2) A child-placing agency shall register a foster home with the cabinet, approved by the child-placing agency, to include medically complex foster homes and therapeutic foster care homes.

~~(3)[(2)]~~ Information shall be provided to the cabinet in a format prescribed by the cabinet, to include:

(a) The foster parent's:

1. Full name;

2. Social Security number; and

3. Address, including county of residence;

(b) The child-placing agency's:

1. Name; and

2. Mailing address;

(c) 1. The date the foster home was:

a. Approved;

b. Denied;

c. Withdrawn; or

d. Closed; and

2. The reason for the change in the foster home status; and

(d) Whether the foster home is currently active or inactive.

~~[(3) Subsection (2)(c) shall have a delayed implementation due to the integration of technology, but shall be effective no later than October 30, 2019.]~~

~~Section 20.[Section 24.]~~ Emergency Preparedness. Each foster home shall submit an emergency preparedness plan to the private agency that would allow the agency to identify, locate, and ensure continuity of services to children who are in the custody or control of the state agency[cabinet] or private agency.

~~Section 21.[Section 25.]~~ Incorporation by Reference. (1) The "DPP-112B, Private Child-Placing Agency Placement Exception Request", 07/22[02/22][4/19], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 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: July 8, 2022

FILED WITH LRC: July 11, 2022 at 10:30 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for child-placing agencies who provide contracted foster care placements for children in the custody of the cabinet.

(b) The necessity of this administrative regulation: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services (CHFS) to promulgate, administer, and enforce programs mandated by federal law or to qualify for the receipt of federal funds. KRS 199.640(5)(a) requires CHFS to promulgate administrative regulations establishing basic standards of care and service for child-caring and child-placing agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to implement programs mandated by federal law and to qualify for the receipt of federal funds, establishes basic standards of care and service for child-placing agencies, and implements the provision of

KRS Chapter 605.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation conforms to KRS 194A.050(1), 199.640(5)(a), and 605.150(1) by establishing standards for child-placing agencies.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes requirements related to the foster care registry that were passed in House Bill 312 of the 2020 Regular Session and codified in KRS 199.660. The amendment includes actions that must be taken by a child-placing agency related to foster homes that are or have been closed for cause or put under corrective action. This amendment removes the standards that apply to a private child-placing agency that places children who are not in the custody of the cabinet into foster or adoptive homes. A new administrative regulation, 922 KAR 1:315, has been drafted to contain those standards. Amendment to this administrative regulation was also necessary to provide consistency with amendments being made to 922 KAR 1:340 relating to independent living programs and services. The incorporated material, the DPP-112B, is being amended to include the proposed or actual placement date.

The administrative regulation is being further amended in response to public comments received during the public comment period to clarify the entities affected by this administrative regulation, include a new definition, and make minor clarifications and corrections that were requested. The DPP-112B is being further amended to clarify information being requested and include more information related to family strengths and supports and available methods of transportation.

(b) The necessity of the amendment to this administrative regulation: This amendment includes processes for child-placing agencies that were required by legislation that passed in 2020 and have been placed in contract since that time. This amendment was also necessary to conform to the amendment of 922 KAR 1:340 related to independent living programs and services. Federal model standards for foster homes were also recently released causing the cabinet to establish those standards in a separate administrative regulation, the newly-promulgated 922 KAR 1:315. Standards affecting those agencies are being eliminated from this administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate, administer, and enforce programs mandated by federal law or to qualify for the receipt of federal funds. KRS 199.640(5)(a) requires the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-caring and child-placing agencies. This amendment incorporates federal standards into the procedures of child-placing agencies.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains basic standards of care and service for child-placing agencies placing children who are 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: As of January 2, 2022, there were 3,259 children in the custody of the cabinet placed in private child-placing foster homes (Source TWS-W058, January 2022 Foster Care FACTS). There are currently thirty private child-placing agencies licensed to place children in the custody of the cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Child-placing agencies are required to meet the requirements contained in KRS 199.660 related to the closure or corrective action of a foster home. Child-placing agencies that also place children who are not in the custody of the cabinet will be regulated pursuant to 922 KAR 1:315 in addition to 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 additional cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Child-placing agencies have additional requirements (pursuant to KRS 199.660) to meet regarding foster homes that are or have been closed for cause or put under a corrective action, which will help ensure that children placed in those homes are safe and treated appropriately.

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

(a) Initially: The foster care registry has already been implemented and standards for child-placing agencies are already established; therefore, there is not a cost to implement this administrative regulation.

(b) On a continuing basis: The foster care registry has already been implemented and standards for child-placing agencies are already established; therefore, there is not a 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: General Funds and Title IV-E funds are used in the implementation of this program.

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

(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 directly or indirectly increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation is applied in a like manner statewide for agencies that place children in the custody of the cabinet.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671, 42 U.S.C. 677(a), 14901-14954

(2) State compliance standards. KRS 194A.050(1), 199.640(5)(a), 605.150(1)

(3) Minimum or uniform standards contained in the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671, 42 U.S.C. 677(a), 14901-14954

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services and the Office of Inspector General, will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.640(5)(a), 605.150(1), 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671, 42 U.S.C. 677(a), 14901-14954

(3) Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate any revenue for the cabinet 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 administrative regulation will not generate any new revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative body projects costs associated with implementation of this administrative regulation will be within existing appropriations for the first year. General Fund and Title IV-E funds are used in the implementation of this program.

(d) How much will it cost to administer this program for subsequent years? The administrative body projects costs associated with the implementation of this administrative regulation will be within existing appropriations for subsequent years. General Fund and Title IV-E funds are used in the implementation of this program.

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? There are no cost savings associated with this administrative regulation.

(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 administrative regulation.

(c) How much will it cost the regulated entities for the first year? Private child-placing agencies are already meeting the requirements contained in this administrative regulation. There are no additional costs associated with this administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? Private child-placing agencies are already meeting the requirements contained in this administrative regulation. There are no additional costs associated with this administrative regulation.

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

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 will not have a major economic impact. The only new requirements in this administrative regulation relate to the foster care registry required by KRS 199.660 and is already in operation.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:315. Standards for child-placing agencies placing children who are not in the custody of a state agency~~[the cabinet]~~.

RELATES TO: KRS 194A.060, 199.011, 199.470, 199.510, 199.520, 199.572, 199.640, 273.161(8), 600.020, 620.030, Chapter 625

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.640(5)(a) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies relating to the health and safety of all children in care, including children who are not in the custody of 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 basic standards for child-placing agencies who are placing children who are not in the custody of a state agency~~[the cabinet]~~.

Section 1. Definitions. (1) "Adequate supervision" means adult oversight of a child's activities with consideration of the child's past and current:

- (a) Incidents;
- (b) High risk behaviors; and
- (c) Needs.

(2) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.

(3) "Adoptive home" means a home in which the family has been approved by the child-placing agency to adopt a child.

(4) "Aftercare" means services provided to the child after discharge from a child-placing agency.

(5) "Applicant" means an individual or a family subject to approval by the child-placing agency as a:

- (a) Foster home; or
- (b) Adoptive home.

(6) "Board of directors" is defined by KRS 273.161(8).

(7) "Case management" means a process whereby a state agency or child-placing agency assesses the individualized needs of a child or family, arranges for the provision of services, and maintains documentation of actions and outcomes.

(8) "Child" means a child as defined by KRS 199.011(4) and 600.020(9);

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

(10) "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of a child-placing agency.

(11) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) and 600.020(30), if referring to a physical structure; or

(b) Any individual approved as a foster parent by the child-placing agency, if referring to an individual.

(12) "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker that meets the requirements specified in Section 4(3) of this administrative regulation.

(13) **"Independent living services" means services provided to an eligible child age fourteen (14) or older, as specified in 922 KAR 1:310, Section 15, to assist the child in the natural progression from adolescence to adulthood.**

(14) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(15)(14) "Placement" means:

- (a) The physical relocation of a child removed from the child's home of origin with a provider of out-of-home services; or
- (b) A foster or adoptive home that has been approved by completing an application process, home study, and required preparation.

(16)(15) "Qualified mental health professional" is defined by KRS 600.020(52).

(17)(16) "Respite care" means temporary care provided by another individual or family that meets requirements specified in Section 7 of this administrative regulation to meet the needs of the child or provide relief to a foster care parent with the expectation that the child shall return to the foster home.

(18)(17) "Social services worker" means a person retained by a child-placing agency who meets the qualifications as specified in 922 KAR 1:310, Section 2(4)(c).

(19)(18) "Supervision plan" means a written supplement to a child's ITP, developed pursuant to Section 6(7)(b)2 of 922 KAR 1:310, that details a child-placing agency's roles and responsibilities to assure adequate supervision of a child in the agency's care, including those roles and responsibilities delegated to a foster home parent.

Section 2. Administration and Operation. A child-placing agency that places a child pursuant to this administrative regulation shall also meet the requirements established in 922 KAR 1:310, Section 2.

Section 3. Interstate Placement. (1) A child-placing agency that accepts a child from another state or places a child outside of Kentucky shall meet the requirements established in 922 KAR 1:310, Section 3.

(2) A child-placing agency that is assisting with an Interstate Compact Placement for a child who is placed due to a disrupted or dissolved adoption shall:

- (a) Assist in the obtainment of a therapeutic recommendation from a qualified mental health professional regarding the child being placed into the proposed placement;
- (b) Ensure that the prospective adoptive parents have spoken with the qualified mental health professional that has been providing services to the child;
- (c) Assist in the development of a thorough transition plan for the child adhering to the child's qualified mental health provider's recommendations;
- (d) Assist in the procurement of services and providers within the receiving state, prior to the placement of the child;
- (e) Provide a minimum of monthly face-to-face supervision in the home and support to the child and family if placed in Kentucky until the finalization of the adoption;
- (f) Continually assess for any safety risks within the home and provide a written plan for safety, if necessary or requested; and
- (g) Ensure that the child is placed for at least six (6) months prior to finalization of the adoption.

Section 4. Evaluation of an Applicant. A child-placing agency's staff shall recruit a prospective foster or adoptive home in accordance with 922 KAR 1:310, Section 4.

Section 5. Orientation and Preparation of a Foster Home for a Child not in the Custody of a State Agency~~(the Cabinet)~~.

(1) A child-placing agency shall meet the requirements established in 922 KAR 1:310, Section 5(1)(a) through (c).

(2) Training provided in accordance with 922 KAR 1:495 may be utilized for a foster home that cares for a child not in the custody of the cabinet if the governmental agency or individual with oversight of the child approves the training.

Section 6. Expectations for a Foster Home Caring for a Child not in the Custody of a State Agency~~(the Cabinet)~~. An approved foster home shall:

- (1) Provide a child placed by the child-placing agency with a

family life, including:

- (a) Nutritious food;
- (b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;
- (c) Affection;
- (d) Life skills development;
- (e) Recreational opportunities;
- (f) Education opportunities;
- (g) Nonmedical transportation;
- (h) Opportunities for development consistent with the child's religious, ethnic, and cultural heritage;
- (i) Adequate supervision;
- (j) Independent living services for a child fourteen (14)~~(twelve (12))~~ years of age or older; and
- (k) Refraining from smoking in the direct presence of a child for whom their physician recommends, in writing, a smoke-free environment.

(2) Permit the approving~~(a)~~ child-placing agency and cabinet staff ~~[of a state agency]~~ to visit the home;

(3) Share with the child-placing agency any information about the child placed by the child-placing agency;

(4) Notify the child-placing agency fourteen (14) calendar days prior if the home is approved to provide foster or adoptive services through another private child-placing agency;

(5) Notify the child-placing agency prior to:

- (a) Leaving the state with a child placed by the child-placing agency for more than twenty-four (24) hours; or

- (b) Allowing a child placed by the child-placing agency to be absent from the foster home for more than twenty-four (24) hours;

(6) Report immediately to the child-placing agency through which the child is placed if there is:

- (a) A hospitalization or life-threatening accident or illness;
- (b) An absence without official leave;
- (c) A suicide attempt;
- (d) Criminal activity by the child;
- (e) Death of any member in the household;
- (f) A child's possession of a deadly weapon;
- (g) Change in address;
- (h) Change in the number of people living in the home;
- (i) Significant change in circumstance in the foster home; or
- (j) Failure of the foster child or foster parent to comply with the supervision plan;

(7) Cooperate with the child-placing agency if child-placing agency staff arranges for a child, placed in the foster home by the child-placing agency, and the child's birth family regarding:

- (a) Visits;
- (b) Telephone calls; or
- (c) Mail;

(8) Surrender a child or children to the authorized representative of the child-placing agency which has custody of the child, upon request;

(9) Keep confidential all personal or protected health information as shared by the child-placing agency, in accordance with KRS 194A.060 and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child's birth family;

(10) Support an assessment of the service needs, including respite care, and the development of an ITP, including the supervision plan, of a child placed by the child-placing agency;

(11) Participate in a planning conference concerning a child placed by the child-placing agency;

(12) Cooperate with the implementation of the permanency planning established for a child placed by the child-placing agency;

(13) Facilitate the delivery of medical care to a child placed by the child-placing agency as needed, including:

- (a) Administration of medication to the child and daily documentation of the administration; and
- (b) Physicals and examinations for the child;

(14) Treat a child placed by the child-placing agency with dignity;

(15) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030; and

(16) Comply with general supervision and direction of the child-placing agency concerning the care of the child placed by the child-placing agency.

Section 7. Respite for a Foster Home Caring for a Child not in the Custody of a State Agency~~[the Cabinet]~~. (1) The child-placing agency shall develop written policies and procedures to address the respite care needs of a child or a foster parent.

(2) Respite care shall not be used as a means of placement for a child.

(3) Respite care shall be in accordance with 922 KAR 1:310, Section 3(2).

(4) The child-placing agency shall not approve a respite care provider unless the provider meets requirements specified by 922 KAR 1:310, Section 4(3)(b), (d), and (m) through (u).

(5) A respite care provider shall:

(a) Receive, from the agency or foster parent, preparation for placement of a child, including information regarding the child's needs and the supervision plan of the child;

(b) Provide adequate supervision in accordance with the child's supervision plan;

(c) 1. Give relief to a foster parent caring for a child; or

2. Provide for a de-escalation period for a child;

Section 8. Private Foster Placement Process. A child-placing agency shall follow the procedures established by this section if a private foster placement is conducted.

(1) For a child being placed with a child-placing agency, the child-placing agency shall obtain an:

(a) Agreement for voluntary care signed by the custodian; or

(b) Order from a court of competent jurisdiction placing the child into the custody of the child-placing agency.

(2) The child-placing agency shall:

(a) Complete an intake assessment of the strengths and needs of the child and the child's family of origin; and

(b) Ascertain the appropriateness of the referral for the child.

(3)(a) The child-placing agency shall develop an ITP individualized for a child and the child's family based on an individualized assessment of the child's and family's needs:

1. Within thirty (30) days of the child's placement with the child-placing agency; or

2. Prior to the child being placed out of state.

(b) An exception to the requirement specified in paragraph (a) of this subsection may be made for a child:

1. Under the age of twelve (12) months; and

2. With no extraordinary needs.

(c) The assessment shall be revised as needed.

(d) The assessment and ITP shall include the type and extent of services to be provided to the child and the child's family.

(e) Assessment of the child shall include consideration of the following history:

1. Behavioral health treatment;

2. Trauma;

3. Risk for harm to self or others; and

4. Past behaviors or safety issues that could increase the likelihood of placement disruption.

(4) Unless not in the best interest of the child, the child, parent, and foster parent shall be included in developing the assessment and ITP.

(5)(a) The foster home selected for placement shall be the most appropriate home based on the child's needs and the strengths of the foster family.

(b) The foster home shall be located as close as possible to the home of the family of origin, in order to facilitate visiting and reunification.

(6)(a) The social services worker and the foster parent shall work collaboratively to prepare the child prior to the placement.

(b) Unless a circumstance precludes preparation and the circumstance is documented in the case record, a child shall have a period of preparation prior to the placement in the foster home.

(7) The child-placing agency shall:

(a) Provide or arrange for services to support reunification for a child for whom family reunification is the plan;

(b) Assess and document the parent's capacity for reunification quarterly;

(c) Provide for review of the child in order to evaluate the progress toward achieving the child's permanency plan every six (6)

months; and

(d) ~~Assess whether~~**[Assure that]** foster care continues to be the best placement for the child.

(8)(a) Services to the family of origin and to the child shall be adapted to their individual capacities, needs, and difficulties.

(b) A reasonable effort shall be made to return the child to the family of origin.

(9) Planning for the child regarding treatment program matters, including visitation, health, education, and permanency plans, shall be developed in collaboration with the:

(a) Family of origin;

(b) The child's qualified mental health provider, if applicable;

(c) Social services worker; and

(d) Foster home.

(10)(a) The child-placing agency shall work with a foster home to promote stability and avoid disruption for a child, to include:

1. Services specified in Section 6(1) through (3), and (7) through (11) of 922 KAR 3:010; and

2. Reevaluation of the foster home in accordance with Section **14[9]** of this administrative regulation.

(b) A request for the removal of a child from a foster home shall be explored immediately and shall be documented by the social services worker.

(c) If disruption is unavoidable, the child-placing agency and foster home shall develop a plan for the smooth transition of the child to a new placement.

(11)(a) Preparation for the return of a child to the family of origin shall be supervised by a social services worker.

(b) The child's family shall participate in planning for the child's return.

(c) If regular contact with the child's family does not occur, a plan for the child's return shall include at least one (1):

1. Prior visit between the child and the family; and

2. Preliminary visit of the child to the child's family home.

(12) The child-placing agency shall recommend a plan for aftercare services for a child and the child's family.

Section 9. ~~[Reevaluation of an Approved Foster or Adoptive Home. A child-placing agency shall reevaluate an approved foster home or approved adoptive home awaiting placement in accordance with 922 KAR 1:310, Section 14.]~~

Section 10.] Maintenance of a Foster Care Record. The child-placing agency shall maintain a record on each child and foster home in accordance with 922 KAR 1:310, Section 16.

Section 10.[Section 14.] Orientation and Preparation of an Adoptive Home for a Child not in the Custody of a State Agency~~[the Cabinet]~~. For a child not in the custody of a state agency~~[the cabinet]~~, a child-placing agency shall:

(1) Prepare and maintain the orientation and preparation curriculum on file;

(2) Provide orientation and preparation to a prospective adoptive home in accordance with the child-placing agency's policies and procedures to include the following:

(a) An example of an actual experience from a parent who has adopted a child;

(b) Challenging behavior characteristics of an adoptive older child;

(c) Referral resources for a developmental delay;

(d) Transition issues with focus on stages of grief, and a honeymoon period, if applicable;

(e) Loss and the long-term effects on a child;

(f) Attachment and identity issues of the child;

(g) Cultural competency;

(h) Medical issues including referral resources;

(i) Family functioning, family values, and expectations of an adoptive home;

(j) Identification of changes that may occur in the family unit upon the placement of a child to include:

1. Family adjustment and disruption;

2. Identity issues; and

3. Discipline; and

(k) Financial assistance available to an adoptive home; and
 (3) Ensure that an approved adoptive home awaiting the placement of a child receives adoptive home training annually in accordance with the child-placing agency's established policies and procedures.

Section 11.~~[Section 12.]~~ Adoption Placement Process for a Child not in the Custody of ~~a State Agency~~~~[the Cabinet]~~. (1) A child shall not be placed for adoption until the:

(a) Adoptive home has been approved; and
 (b)1. Parental rights of the mother, legal or birth father, and putative father of the child, if applicable and not the same person as the legal father, are terminated by a circuit court order entered pursuant to KRS Chapter 625; or

2. The mother, legal or birth father, and putative father of the child, if applicable and not the same person as the legal father, have consented to placement with the child-placing agency for the purpose of adoption placement.

(2) A child's parent shall not be persuaded to terminate parental rights by a promise of financial aid or other consideration.

(3)(a) A child-placing agency licensed by the cabinet shall not use the authority authorizing the agency to place a child for adoption to facilitate an adoptive placement planned by a doctor, lawyer, clergyman, or person or entity outside the child-placing agency.

(b) The child-placing agency shall comply with provisions of 922 KAR 1:010.

(4) The child-placing agency shall obtain the following:

(a) A developmental history of the adoptive child to include:

1. Birth and health history;

2. Early development;

3. Characteristic ways the child responds to people and situations;

4. Any deviation from the range of normal development;

5. The experiences of the child prior to the decision to place the child for adoption;

6. Maternal attitude during pregnancy and early infancy;

7. Continuity of parental care and affection;

8. Out-of-home placement history;

9. Separation experiences; and

10. Information about the mother, legal father, and putative father, if applicable and not the same person as the legal father, and family background:

a. That may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology; and

b. Including an illness of the biological mother or father;

(b) A social history of the biological or legal parent, to include:

1. Name;

2. Age;

3. Nationality;

4. Education;

5. Religion or faith; and

6. Occupation;

(c) Information obtained from direct study and observation of the child by a:

1. Social services worker; and

2. Physician or other health professional;

(d) If indicated, information obtained from direct study and observation of the child by a:

1. Foster parent;

2. Nurse;

3. Psychologist; or

4. Other consultants; and

(e) Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of:

1. Determining the father's parental rights; and

2. Establishment of possible hereditary endowments.

(5) If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information, to the extent possible, from the existing case record.

(6) Prior to finalization of the adoptive placement, a licensed physician or other health professional shall make a medical examination to determine:

(a) The state of the child's health;

(b) Any significant factor that may interfere with normal development; and

(c) The implications of any medical problem.

(7) The condition under which an adoptive home agrees to accept the child shall be decided upon, prior to placement of the child. The written agreement between the child-placing agency and the adoptive home shall embody the following provisions:

(a) The adoptive home shall agree to:

1. Comply with KRS 199.470;

2. File an adoptive petition at a time agreeable to the adoptive home and the child-placing agency; and

3. Permit supervision by the child-placing agency in accordance with the child-placing agency's policies and procedures:

a. After placement; and

b. Preceding a final judgment of adoption by the circuit court;

(b) The child-placing agency shall be responsible for providing the adoptive home with written information regarding the child's:

1. Background;

2. Medical history;

3. Current behavior; and

4. Medical information necessary to comply with KRS 199.520(4)(a); and

(c) The adoptive home and the child-placing agency shall agree that the child may be removed from the placement, at the request of either party, before the filing of the adoptive petition.

(8)(a) The child-placing agency shall arrange preplacement~~[Preplacement]~~ visits ~~[shall be arranged]~~ for the adoptive home and a child.

(b) The pattern and number of visits shall be based on the child's:

1. Age;

2. Development; and

3. Needs.

(9) During preparation, the child-placing agency shall discuss the child's readiness to accept the selected placement with the child, in accordance with the child's age and ability to understand.

(10)(a) Unless the child-placing agency and, if applicable, the state agency which has custody of a child belonging to a sibling group, determines that it is more beneficial for siblings to be placed in separate adoptive homes, siblings who have had a relationship with each other shall be placed together.

(b) If siblings have been separated in placements:

1. The case record shall reflect a valid basis for the separation;

2. The decision to separate siblings shall be made by the executive director of the child-placing agency; and

3. Continued contact between siblings shall be maintained, if possible.

(11) A child-placing agency shall comply with Section 6(1)(b) of 922 KAR 1:310 during the process of placing a child in a prospective adoptive home.

(12) If a prospective adoptive home is awaiting an international adoption, the child-placing agency shall conduct a reevaluation of the home once every eighteen (18) months.

Section 12.~~[Section 13.]~~ Supervision of an Adoptive Placement of a Child not in the Custody of ~~a State Agency~~~~[the Cabinet]~~. (1) For a child not in the custody of ~~a state agency~~~~[the cabinet]~~, the child-placing agency placing a child shall remain responsible for the child until the adoption has been granted. This responsibility shall involve the following:

(a) A minimum of two (2) meetings by the social services worker with the child and the adoptive home, including both adoptive parents if not a single parent adoption, one (1) visit of which shall be in the adoptive home before filing of the adoption petition;

(b) The continuation of case management, visits, and telephone contacts based upon the needs of the child until the adoption is legally granted; and

(c) Awareness of a change in the adoptive home including health, education, or behavior.

(2) For a placement made through the Interstate Compact on the Placement of Children, supervision shall occur in accordance with Section 3 of this administrative regulation.

(3) The child-placing agency shall:

(a) Provide information pursuant to KRS 199.510, as necessary to report to the court to proceed with adoption;

(b) Prepare and provide the original confidential report to the court; and

(c) Forward to the cabinet a copy of:

1. The confidential report that was provided to the court; and

2. Information required by KRS 199.520 and 199.572.

(4) If the court finds the adoptive home to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 13.~~[Section 14.]~~ Maintenance of Adoptive Case Record. ~~[(4)]~~ The child-placing agency shall maintain a case record in accordance with 922 KAR 1:310, Section 17.

Section 14. Reevaluation of an Approved Foster or Adoptive Home. A child-placing agency shall reevaluate an approved foster home or approved adoptive home awaiting placement in accordance with 922 KAR 1:310, Section 14.

Section 15. Closure of an Approved Foster or Adoptive Home. ~~[(4)]~~ A child-placing agency shall close a foster or adoptive home in accordance with 922 KAR 1:310, Section 18.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 28, 2022

FILED WITH LRC: July 11, 2022 at 10:30 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for child-placing agencies who provide contracted foster care and adoptive placements for children not in the custody of the state, consistent with federal model standards.

(b) The necessity of this administrative regulation: The federal government issued model standards for all foster homes that the cabinet needed to incorporate into administrative regulation to ensure conformity to federal guidelines, including foster homes caring for children not in the custody of the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to KRS 194A.050(1), 199.640(5)(a), and 605.150(1) by establishing standards for child-placing agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure conformity to federal model standards for foster homes certified through child-placing agencies for children not in the custody of the state.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation that contains standards for child-placing agencies providing services to children not in the custody of a state agency (not in the custody of DCBS or the Kentucky Department of Juvenile Justice). The administrative regulation is being amended in response to public comments received from the Children's Alliance to include a definition for "independent living services" and make a related correction, specify affected entities and better clarify requirements, and move a section to a more logical place as requested.

(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: According to information from the Office of the Inspector General, approximately fifty agencies are licensed by Kentucky to place children who are either in the custody or not in the custody of the cabinet.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Private child placing agencies will need to request that potential foster and adoptive parents submit to the requirements contained in this administrative regulation to become certified for the placement of children not in the custody of DCBS or DJJ.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to child-placing agencies as a result of this administrative regulation. Many of the requirements contained herein were previously contained in 922 KAR 1:310.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will benefit children who are placed outside of their home, but not through the custody of the cabinet or DJJ.

(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 implement this administrative regulation.

(b) On a continuing basis: There are no additional costs to implement this administrative regulation. Many of the provisions contained in this administrative regulation were previously contained in 922 KAR 1:310 and are not new.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is enforced through the use of 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.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be implemented in a like manner statewide for agencies that place children not in the custody of a state agency.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 1355.34, 8 U.S.C. 1151, 42 U.S.C. 671, 42 U.S.C. 677(a), 14901-14954

(2) State compliance standards. KRS 194A.050(1), 199.640(5)(a), 605.150(1)

(3) Minimum or uniform standards contained in the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 1355.34, 8 U.S.C. 1151, 42 U.S.C. 671, 42 U.S.C. 677(a), 14901-14954

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This

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administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

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, Department for Community Based Services and the Office of the Inspector General, will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.640(5)(a), 605.150(1), 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 1355.34, 8 U.S.C. 1151, 42 U.S.C. 671, 42 U.S.C. 677(a), 14901-14954

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate any revenue for the cabinet 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 administrative regulation will not generate any new revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There are no additional costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There are no additional 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? There are no cost savings associated with this administrative regulation, but there are not costs either. Many of the requirements contained herein were previously contained in 922 KAR 1:310.

(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 administrative regulation.

(c) How much will it cost the regulated entities for the first year? Private child-placing agencies are already meeting the requirements contained in this administrative regulation. There are no additional costs associated with this administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? Private child-placing agencies are already meeting the requirements contained in this administrative regulation. There are no additional costs associated with this administrative regulation.

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

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 will not have a major economic impact. The requirements of this administrative regulation were previously established in 922 KAR 1:310 and are already being met.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amended After Comments)

922 KAR 1:340. Standards for independent living programs.

RELATES TO: KRS 2.015, ~~[194A.050, 194A.060, 199.011, 199.430(3), 199.640, 199.650-199.670, 600.020, 605.090(1), 610.110(6), 620.140(1)(d), 42 U.S.C. 677(a)(1)-(6)]~~

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 605.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.640(5)(a) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150(1) permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards of care for independent living programs.

Section 1. Definitions. (1) "Aftercare" means services provided to the child after discharge from a child-placing agency.

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

(3) "Child" means:

(a) A child as defined by KRS 199.011(4) and ~~600.020(9)]~~~~600.020(8)]~~;

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(4) "Child-placing agency" is defined by KRS ~~199.011(6)]~~~~199.011(7)]~~.

(5) "Community resource" means a service or activity available in the community in addition to those provided by the child-placing agency in the care and treatment of a child.

(6) "Independent living program" means a planned program that:

(a) Is licensed by the cabinet and designed to teach a child age ~~eighteen (18)]~~~~sixteen (16)]~~ or older life skills that enable a child to become self-sufficient; and

(b) Meets the requirements established~~[specified]~~ in Section 3(1) of this administrative regulation.

(7) "Independent living services" means services provided to an eligible child age fourteen (14) or older, as specified in 922 KAR 1:310, Section ~~15~~~~[46]~~, to assist the child in the natural progression from adolescence to adulthood~~[transition from dependency of childhood to living independently]~~.

(8) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(9) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and the individual's environment.

(10) ~~"Social services worker" means a person who meets the qualifications established within 922 KAR 1:310, Section 2.~~

(14)] "Supervision plan" means a written supplement to a child's ITP, developed in accordance with 922 KAR 1:310, Section 6, that details a child-placing agency's roles and responsibilities to assure adequate supervision of a child in the agency's care, including those roles and responsibilities delegated to a foster home parent.

Section 2. Administration and Operation. (1) Licensing procedures for an independent living program shall be:

- (a) In compliance with 922 KAR 1:310 for a private child-placing agency; and
 - (b) Administered pursuant to 922 KAR 1:305.
- (2) An independent living program shall meet the requirements of 922 KAR 1:310, Section 15[46].

Section 3. Independent Living Program[Programming] and Services[Program]. (1) A child-placing agency providing an independent living program[programming] shall be in compliance with 922 KAR 1:310, Section 15[46], and staff shall:

(a) Conduct and document an assessment of the child's skills and knowledge:

1. Within fourteen (14) days of a child's placement with the child-placing agency and provision of services by the agency's independent living program; and

2. Using a tool to assess:

- a. Money management and consumer awareness;
- b. Job search skills;
- c. Job retention skills;
- d. Use of and access to:
 - (i) Community resources;
 - (ii) Housing; and
 - (iii) Transportation;
- e. Educational planning;
- f. Emergency and safety skills;
- g. Legal knowledge;
- h. Interpersonal skills, including communication skills;
- i. Health care knowledge, including knowledge of nutrition;
- j. Human development knowledge, including sexuality;
- k. Management of food, including food preparation;
- l. Ability to maintain personal appearance;
- m. Housekeeping; and
- n. Leisure activities;

(b) Develop and update quarterly a written ITP within thirty (30) calendar days of a child's placement in an independent living program, to include:

1. Educational, job training, housing, and independent living goals;
2. Objectives to accomplish a goal;
3. Methods of service delivery necessary to achieve a goal and an objective;
4. Person responsible for each activity;
5. Specific timeframes to achieve a goal and an objective;
6. Identification of a discharge plan;
7. Plan for aftercare services; and
8. Plan for services from community resources;

(c) Maintain written policies and procedures for the independent living program;

(d) Train and document the training provided to designated independent living staff within thirty (30) days of employment on:

1. Content of the independent living curriculum;
2. Use of the independent living materials;
3. Application of the assessment tool; ~~and~~
4. Documentation methods used by the child-placing agency;
5. State and federal benefits available to current and former foster children;

6. State information web portals for foster children; and
7. Social media resources and regional independent living specialists available to foster children; and

(e) Maintain, ~~and~~ teach, and support independent living in accordance with 42 U.S.C. 677(a), including:

1. Obtaining a high school diploma or equivalency and post-secondary education;
2. Obtaining vocational training;
3. Financial literacy, money management, and consumer awareness;
4. Career exploration and
[2.] job search skills;
5. [3.] Job placement and retention skills;
6. [4.] Educational planning;

5.] Community resources;

7. [6.] Securing stable housing;

8. [7.] Transportation, including driving instruction;

9. [8.] Emergency and safety skills;

10. [9.] Legal skills;

11. [40.] Interpersonal skills, including communication skills;

12. [44.] Health care, including nutrition, smoking avoidance, and preventive health activities;

13. [42.] Human development, including sexuality and pregnancy prevention;

14. [43.] Food management, including food preparation;

15. [44.] Maintaining personal appearance;

16. [45.] Housekeeping;

17. [46.] Leisure activities;

18. [47.] Voting rights and registration;

19. [48.] Registration for selective service, if applicable;

20. [49.] Self-esteem;

21. [20.] Anger and stress management;

22. [24.] Problem-solving skills; ~~and~~

23. [22.] Training and the opportunity to practice daily living skills;

24. Substance abuse prevention;

25. Developing and maintaining mental, emotional, and physical health;

26. Developing meaningful, permanent connections;

27. Educational planning;

28. Planning for the successful transition to adulthood ~~out of care~~, including obtaining necessary documentation; and

29. [28.] Decision-making and planning skills.

(2) Child-placing agency staff ~~A social services worker from an independent living program~~ shall:

(a) With the exception permitted by subsection (6) of this section, be responsible for a child at least ~~sixteen (16) to~~ eighteen (18) years of age in an independent living program and provide supervision in accordance with the child's supervision plan;

(b) Be available for twenty-four (24) hours, seven (7) days a week crisis support for a child in the independent living program, regardless of the child's age;

(c) [Have:

1. Daily face-to-face contact with a child:

a. Sixteen (16) to eighteen (18) years of age; and

b. In the independent living program; or

2. A minimum of one (1) face-to-face, in-home contact per week for a child

a. Eighteen (18) to twenty-one (21) years of age; and

b. In the independent living program;

(d) Conduct a visual and exploratory review of a child's living unit at least monthly, to include a review for:

1. Safety;

2. Use of alcohol; and

3. Illegal contraband;

(e) [Maintain a caseload of no more than ten (10) children], including independent living program:

1. Participants sixteen (16) to twenty-one (21) years of age; and

2. Participants' children assigned a Level of Care of III or higher in accordance with 922 KAR 1:360; and

(f) [Document annual compliance with fire and building codes for any living unit in which the agency places a child.

(3)(a) A living unit for a child in an independent living program shall be occupied by only a child or children approved to occupy the living unit by the child-placing agency.

(b) Nonresidents shall be asked to vacate the living unit.

(4) The child-placing agency shall assure and document that the living unit of a child in an independent living program:

(a) Does not present a hazard to the health and safety of the child;

(b) Is well ventilated and heated; and

(c) Complies with state and local health requirements regarding water and sanitation.

(5) The child-placing agency shall maintain documentation for each child concerning:

(a) Assistance to the child in finding and keeping in touch with family, if possible;

(b) Physical and behavioral health services received by a child;

- (c) Progress each child has made in the independent living program, including independent living services received;
- (d) Progress in an educational program, including vocational education;
- (e) An assessment of the child's readiness to live independently; and
- (f) Staff s[The social services worker's] contacts with the child, including observation of the child's living arrangement.

(6) A child that is seventeen (17) and ~~one-half (1/2)~~~~three-fourths (3/4)~~ years of age may be placed in a supervised independent living site **or scattered independent living student housing site** if an exception to subsection (2)(a) of this section is approved by the director of the Division for Protection and Permanency or designee.

Section 4. Independent Living Placement Types. A child-placing agency may provide independent living services to a child placed in:

(1) A supervised independent living site, which shall include an apartment unit or house with or without roommates **that may have shared sleeping spaces, bathrooms, kitchens, or common areas**, if an agency staff member:

(a) Is onsite with the child and available twenty-four (24) hours, seven (7) days a week;

(b) Distributes medication daily, if prescribed by a qualified medical provider;

(c) Has daily face-to-face in-person contact with the child; and

(d) Ensures that the child meets daily curfew requirements established by the agency; or

(2) A scattered independent living site, which shall include an apartment unit, ~~for~~ house, or student housing with or without roommates that may have shared **sleeping spaces, bathrooms, kitchens, or common areas**, if an agency staff member has at least one (1) face-to-face, in-person contact per week with the child.

MARTA MIRANDA STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 8, 2022, 2022

FILED WITH LRC: July 11, 2022 at 10:30 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation establishes the basic standards of care and service for child-caring and child-placing agencies who administer independent living programs.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the requirements for the placement of a child in the custody of the cabinet with a child placing agency or child caring facility receiving independent living services and programming.

(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 standards for independent living programs and services provided to children in the custody of the cabinet.

(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 the standards, services, and placement options available to children in out of home care at least eighteen (18) years of age and older who are in the custody of the cabinet.

(2) If 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 the administrative regulation establishes the standards for independent living and the requirements for an independent living scattered or supervised site,

in which children at least eighteen (18) years of age who are in the custody of the cabinet may be placed by a private child-placing agency. The amendment also expands the independent living programming to include topics such as benefits available to former foster children, financial literacy, career exploration, and more.

The administrative regulation is being further amendment in response to comments submitted during the public comment period to provide clarifying language, reinsert language around educational planning, and make revisions to allow youth participating in an independent living program to live in student housing.

(b) The necessity of the amendment to this administrative regulation: The amendment to the administrative regulation is necessary to establish the standards and requirements for independent living programming available to assist children in the successful transition from out-of-home care to independence upon their exit from the cabinet's custody.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment of this administrative regulation conforms to the content of the authorizing statutes by establishing the standards of care for independent living programming for children at least eighteen (18) years of age who are in the custody of the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes through the establishment of the basic standards of care required of child placing agencies that provide independent living programming.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 680 children in out-of-home care who are over the age of eighteen (18) who are in the custody of the cabinet and would be eligible for independent living programs. (TWS 058W, December 19, 2021)

(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: Independent living programming will consists of a few more topics than it already does. Independent living programs are already meeting the majority of the requirements contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation requires no new cost to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Children in the custody of the cabinet who are eighteen years of age and older will benefit from more highly developed independent living programming to assist in the successful transition from out-of-home care to independence.

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

(a) Initially: There is no estimated increase in costs as the cabinet currently provides out-of-home care for children over the age of eighteen (18) who are in the custody of the cabinet.

(b) On a continuing basis: There is no estimated increase in costs to the cabinet.

(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 and General Funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: 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 implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 677(a)(1)-(6)

(2) State compliance standards. KRS 194A.050(1), 199.640(5)(a), 605.150(1)

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 677(a)(1)-(6)

(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 requirement, 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 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), 199.640(5)(a), 605.150(1), 42 U.S.C. 677(a)(1)-(6)

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

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

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

(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 amendment provides more support and more placement options for youth participating in independent living programs. Cost savings are not generated by this administrative regulation.

(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 amendment.

(c) How much will it cost the regulated entities for the first year? Independent living programs are already generally meeting the requirements contained in this administrative regulation. This

amendment only includes additional topics to be trained and taught and provides for more placement options for youth participating in programs.

(d) How much will it cost the regulated entities for subsequent years? Ongoing costs will be minimal and only relate to additional topics to be taught to participating youth and generally providers are already doing this. This amendment provides programs with additional placement options for youth.

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 will not have a major economic impact. The cost impact will be minimal and will have a positive effect on youth in the state's custody.

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](#).

BOARDS AND COMMISSIONS
Kentucky Board of Medical Licensure
(Amendment)

201 KAR 9:305. Continued licensure of athletic trainers.

RELATES TO: KRS [214.640,]311.901(1), 311.905(2), 311.909(1)(o)

STATUTORY AUTHORITY: KRS [214.640(4),]311.901(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.901(1) requires the Kentucky Board of Medical Licensure to promulgate administrative regulations relating to the licensure and regulation of athletic trainers and ~~[requires] continuing education requirements~~~~[courses on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome. This administrative regulation establishes the criteria for the continued licensure of athletic trainers].~~

Section 1. Definition. "CEU" means the completion of ten (10) hours of educational courses approved by the:

- (1) Kentucky Board of Medical Licensure; or
- (2) Board of Certification, Inc.

Section 2.~~[(4)]~~ An athletic trainer licensed to practice in the Commonwealth of Kentucky shall complete six (6) CEUs during each three (3) year renewal cycle beginning with the renewal cycle that ends on June 30, 2015.

~~[(2)(a) Upon initial licensure or within the first three (3) year renewal cycle from initial licensure, each licensee shall complete an educational course approved by the Cabinet for Health and Family Services on the transmission, control, treatment, and prevention of the human immunodeficiency virus HIV/AIDS.~~

~~(b) The hours required by paragraph (a) of this subsection shall be counted as part of the six (6) CEUs required by subsection (1) of this section for the three (3) year renewal cycle during which the HIV/AIDS course was completed.]~~

WILLIAM C. THORNBURY, M.D., President

APPROVED BY AGENCY: July 6, 2022

FILED WITH LRC: July 13, 2022 at 11:05 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022 at 9:30 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 September 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118, email leanne.diakov@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining continuing education units for athletic trainers licensed in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for obtaining continuing education units for athletic trainers licensed in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing education units for athletic trainers licensed in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for obtaining continuing education units for athletic trainers licensed in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes the mandatory HIV continuing medical unit requirement for athletic trainers licensed in the Commonwealth of Kentucky, consistent with the removal of that specific requirement from KRS 311.901(1) in 2021.

(b) The necessity of the amendment to this administrative regulation: It is necessary to promulgate this regulation to delete the mandatory HIV continuing medical education unit for athletic trainers licensed in the Commonwealth of Kentucky, after deletion of that specific education from KRS 311.901(1) by the Legislature in 2021.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation acts specifically to delete the previously-mandatory HIV continuing education unit requirement for athletic trainers licensed in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to delete the mandatory HIV continuing education unit for athletic trainers licensed in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all athletic trainers licensed to practice in the Commonwealth of Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

(7) Provide an assessment of whether an 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 of 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 administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the amendment applies equally to all athletic trainers licensed to practice in the Commonwealth of Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Licensure 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 311.901(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. 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:

(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. None.

(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? None.

(d) How much will it cost the regulated entities 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:

(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 amendment of this administrative regulation will not have a major economic impact on state or local government or regulated entities.

BOARDS AND COMMISSION Board of Cosmetology (Amendment)

201 KAR 12:030. Licensing, ~~[permits,]~~and examinations.

RELATES TO: KRS 12.245, 317A.020, 317A.050, 317A.060, 317A.145

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing licenses in cosmetology, esthetic practices, and nail technology, including the operation of schools and salons of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes procedures for examinations and licensing.

Section 1. Fees. License ~~[and permit]~~ fees are set forth in 201 KAR 12:260.

Section 2. Changes. All changes to account information required for licensure shall be submitted to the board within thirty (30) days of occurrence including:

(1) Legal name change;

(2) Change of address;

(3) Change of facility or employer;

(4) Change of phone number;

(5) Change of email address; and

(6) Any other information as required by KRS 317A or 201 KAR Chapter 12 for licensure.

Section 3. Licensure Requirements. A license may be issued upon submission of the following:

(1) All personal and facility licenses shall require an application for the following: an initial license, license renewal, license restoration, an out of state transfer certification, or to request examination. These applications are found on the board's Web page;

(2) Diploma or certified testing documents proving 12th grade equivalency education for initial personal licensure or out of state transfers into Kentucky;

(3) A copy of a government-issued photo identification;

(4) Payment of the fee set forth 201 KAR 12:260;

(5) Resolution of any legal action associated with a prior disciplinary action as described in KRS 317A.145 if necessary;

(6) A current two (2) by two (2) inch passport-style photo taken within the past six (6) months; and

(7) Disclosure to the board of the current name and license number of the facility where the licensee is working.

Section 4. Prior Felony Convictions. An applicant for any license~~[, permit,]~~ or examination issued or conducted by the board convicted of a prior felony shall include with his or her application:

(1) A signed letter of explanation from the applicant;

(2) A certified copy of the judgment and sentence from the issuing court; and

(3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.

Section 5.~~[Section 3.]~~ Reciprocal Licensing.

(1) A license issued by another state ~~may~~shall be considered comparable if the laws of that state require at a minimum:

(a) 1,500 hours of curriculum for cosmetology;

(b) 450 hours of curriculum for nail technology;

(c) 750 hours of curriculum for esthetics;~~[-or]~~

(d) 300 hours of curriculum for shampoo styling; or

(e)~~[(d)]~~ 750 hours of curriculum for instructors.

(2) An applicant licensed in another state may be licensed by reciprocity by submitting the Out of State Transfer Application and the following:

(a) Digital certification showing proof of a passing score on a board-approved nationally recognized theory and practical exam;

(b) Current digital certification of the out of state license from the

issuing state board showing a license in active and good standing;

~~[(c) Diploma or certified testing documents proving 12th-grade equivalency education;]~~

~~[(c)]~~~~[(d)]~~ Payment of the applicable license and endorsement fees required by 201 KAR 12:260 unless a member of the United States Military, Reserves, or National Guard, or his or her spouse, or a veteran or the spouse of a veteran submitting the license fee [a] established in subsection (4)(d) of this section;

~~[(e) A copy of the applicant's government-issued photo identification; and]~~

~~[(f) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.]~~

(3) An applicant from a state whose licensing requirements fail to meet subsection (1) of this section shall apply for a reciprocal license by submitting:

(a) Documentation required by Section 3~~[subsection (2)]~~~~(a)~~ through ~~(g)]~~~~(f)]~~ of this administrative regulation~~[section]~~; and

(b) Payment of the applicable examination fees established in 201 KAR 12:260.

(4) Pursuant to KRS 12.245, a member of the United States Military, Reserves, or National Guard, or his or her spouse, or a veteran or the spouse of a veteran shall apply for a reciprocal license by submitting:

(a) All documents required by Section 3~~[subsection (2)(a)]~~~~(b)~~ through ~~(g)]~~~~(f)]~~ of this administrative regulation~~[section]~~;

(b) The Military Transfer Application;

(c) A document showing proof of service, sponsor's service, or discharge orders listing the applicant or an accompanying family member as a member of the United States Armed Services; ~~and~~

~~(d) Payment of a twenty-five (25) dollar license fee.]~~

(5) All requests for certification of hours or a license shall use the Certification Request Form accompanied by a copy of the applicant's government-issued photo identification and payment of the fee as set forth in 201 KAR 12:260. Certifications shall only be transmitted digitally to the reciprocal state agency.

Section 6.~~[Section 4.]~~ Digital Forms. All applications and forms may be replicated and implemented by the board in an online format for processing, payment receipt, and license issuance.~~[Permits.]~~

~~(1) Any person who engages in the practice of threading, makeup artistry, or eyelash artistry shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.~~

~~(2) The applicant shall include with the Permit Application:~~

~~(a) A copy of the applicant's government-issued photo identification;~~

~~(b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;~~

~~(c) Proof of completion of a board-approved sanitation course within the (1) year period preceding the application; and~~

~~(d) Proof of completion of a board-approved program, if applying for an eyelash artistry permit.]~~

Section 7.~~[Section 5.]~~ Examination Registration.

(1) Applicants shall register using a school enrollment as follows:

(a) A student of a licensed cosmetology school shall register with the board at least eight (8) months prior to graduation;

(b) A nail technician student shall register with the board at least seventy-five (75)~~[forty-five (45)]~~ days prior to graduation; ~~and~~

(c) An esthetician student shall register with the board at least four (4) months prior to graduation; and

(d) A shampoo styling student shall register with the board at least fifty-three (53) days prior to graduation.

(2) A completed Application for Examination or Out of State Application for Examination shall be received in the Board office no later than ten (10) business days prior to the examination date to be scheduled for either the theory test or the practical demonstration component of the exam. Each exam component shall be scheduled using a separate application and payment of the fee set forth in 201 KAR 12:260.

~~[(3) All examination applicants shall submit a two (2) by two (2) inch passport photo of the applicant taken within the past six (6)~~

~~months.]~~

~~[(3)]~~~~[(4)]~~ Theory examination dates shall be valid for ninety (90) days from student notification.

~~[(4)]~~~~[(5)]~~ A passing score for the theory examination, proper application, and payment of fees shall be required prior to being scheduled for the practical examination.

~~[(5)]~~~~[(6)]~~ An applicant with curriculum hours obtained in another state shall include with the Out of State Application for Examination the following:

(a) Certification of curriculum hours from the state licensing board or agency where the hours were obtained, if the state requires the reporting of curriculum hours; or

(b) Certification of the valid licensing status of the school attended from the state board or licensing authority and an official transcript certified by the school.

~~[(6)]~~~~[(7)]~~ Examination applicants shall wear a full set of solid color medical scrubs and bring all instruments and supplies as listed on the board Web site for the practical examination. White colored scrubs or other clothing is prohibited.

Section 8.~~[Section 6.]~~ Examination Components.

(1) The examination shall consist of a theory test and a practical demonstration taken from the curriculum requirements specified in 201 KAR 12:082.

(2) The practical demonstration shall be performed on a:

(a) Mannequin head and hand for the cosmetology practical examination;

(b) Mannequin head for the esthetician or shampoo styling~~[blow drying]~~ services practical examination; or

(c) Mannequin hand for the nail technician practical examination.

(3) The applicant shall provide a mannequin head or hand as needed for an examination.

Section 9.~~[Section 7.]~~ Grading.

(1) A minimum passing grade of seventy (70) percent on the theory test and the practical demonstration shall be required for the cosmetologist, esthetician, shampoo styling, and nail technician examinations

(2) A minimum passing grade of eighty (80) percent on the theory test and eighty-five (85) percent on the practical demonstration shall be required for all instructor examinations.

(3) All passing exam scores shall be valid for six (6) months from completion.

Section 10.~~[Section 8.]~~ Practice before Examination Prohibited.

A student engaging in the practice of cosmetology, esthetic practices, shampoo styling, or nail technology beyond the scope of their registered school enrollment prior to the board examination shall be ineligible to take the examination for a period of one (1) year from the date of the unauthorized practice.

Section 11.~~[Section 9.]~~ License Application.

(1) An applicant who passes the examination shall have ninety (90) days following the examination to apply for a license by complying with all requirements in Section 3(a) through (g) of this regulation. ~~[submitting the License Application form and the following documentation:]~~

~~(a) Diploma or certified testing documents proving 12th-grade equivalency education;~~

~~(b) Payment of the applicable license fee required by 201 KAR 12:260;~~

~~(c) A copy of the applicant's government-issued photo identification; and~~

~~(d) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.]~~

(2) Failure to apply for a license as required by subsection (1) of this section shall require payment of the appropriate restoration and licensing fees set forth in 201 KAR 12:260 before a license may be issued.

~~[(3) An applicant may apply for an apprentice instructor license to be used for training in an approved program after one (1) year of professional licensing. Applicants shall submit the Apprentice~~

Instructor License Application and provide the following documentation:

- (a) Diploma or certified testing documents proving 12th grade equivalency education;
- (b) Payment of the applicable license fee required by 201 KAR 12:260;
- (c) A copy of the applicant's government-issued photo identification; and
- (d) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.]

Section 12.~~[Section 10.]~~ Retaking Examinations.

(1) Any applicant who fails either the theory test or the practical demonstration may retake that portion of the examination upon submitting a new Application for Examination with a two (2) by two (2) inch passport photo of the applicant taken within the preceding six (6) months, and paying the examination fee required by 201 KAR 12:260.

(a) After three (3) failed attempts, the examinee shall be required to wait six (6) months before retaking either portion of the examination. If the examinee does not receive a passing score ~~[after]~~on the third attempt, then the individual shall take an eighty (80) hour supplemental course in theory studies at a school licensed by the board prior to being eligible to retake the examination.

(b) Following the supplemental course, the examinee may attempt the examination two (2) additional times. If the examinee fails both attempts the examinee shall be prohibited from taking the examination within three (3) years from the date of the final failed attempt.

(2) An applicant caught cheating or impersonating another shall not be allowed to retake the examination for a minimum of one (1) year from the date of the original examination.

(3) Any applicant who fails to report for the examination on the date specified by the board shall submit a new examination application and examination fee prior to being rescheduled for examination. The board may waive the examination fee for good cause shown. "good cause" includes:

(a) An illness or medical condition of the applicant that prohibits the applicant from reporting for the examination; or

(b) A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from reporting for the examination.

(4) Documents and certificates submitted with an Application for Examination are valid for one (1) year following the date of submission after which time applicants shall submit updated documents and a new examination application.

Section 13.~~[Section 11.]~~ Duplicate Licenses, Renewal, and Restoration.

(1) If a license is lost, destroyed, or stolen after issuance, a duplicate license may be issued. The licensee shall submit a statement verifying the loss of the license using the Duplicate License Application that includes a copy of a government-issued photo identification, and pay the duplicate license fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

(2) The annual license renewal period is July 1 through July 31. All licenses ~~[and permits]~~ shall renew by providing the required items in Section 3(a) through (g) of this administrative regulation.~~;~~

~~[(a) Be renewed using the Renewal Application or by using the board's online portal;~~

~~(b) Include the required copy of a government-issued photo identification;~~

~~(c) Include payment of the fee set forth 201 KAR 12:260; and]~~

~~(d) Include payment of any outstanding fines associated with a prior disciplinary action as described in KRS 317A.145.]~~

(3) To restore an expired license~~[- or permit]~~, a Restoration Application shall be submitted to the board with payment of the restoration fee as set forth in 201 KAR 12:260 for each year the license has been expired, the total of which shall not exceed \$300 per license restored and by providing the required items in Section 3(a) through (g) of this administrative regulation.~~[- along with the following:~~

- ~~(a) For an expired individual license or permit, a copy of a~~

~~government-issued photo identification;]~~

~~(a) [(b)] For an expired salon license or limited facility permit, a new Salon Application or Limited Facility [Permit] Application; or~~

~~(b) [(c)] For an expired school license, a new School Application.~~

Section 14.~~[Section 12.]~~ Salon and Limited Facility Applications.

(1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or limited facility shall submit the Salon Application or Limited Facility ~~[Permit] Application, provide the required items in Section 3(a) through (f) of this administrative regulation,~~[with required copies of state identification and driver's licenses, pay the applicable fee set forth in 201 KAR 12:260,] and request an inspection by the board inspector in writing a minimum of five (5) business days prior to opening for business.

(2) A new or relocating salon or limited facility shall comply with all applicable city, county, state, zoning, building, and plumbing laws, administrative regulations, and codes.

(3) A salon or facility may be located on the premises of a nursing home or assisted living facility if the salon or facility meets all requirements of this section.

(4) Any salon or facility located in a residence shall have a separate outside entrance for business purposes only. This subsection shall not apply to a nursing home or an assisted living facility if the home or facility has obtained a salon license from the board.

(5) A salon or limited facility shall not open for business prior to issuance of its license~~[- or permit]~~.

(6) Each salon shall maintain a board licensed manager properly licensed in the services the salon provides at all times.

(7) Salon and limited ~~[beauty salon licenses and]~~ facility licenses~~[permits]~~ shall only be mailed to a~~[the]~~ Kentucky mailing address~~[- on the application.]~~

Section 15.~~[Section 13.]~~ Change in Salon Ownership or Transfer of Interest.

(1) The owners, firm, or corporation operating a licensed salon shall submit to the board a new Salon Application, Limited Facility ~~[Permit] Application, or Manager Change Form, provide the required items in Section 3(a) through (f) of this administrative regulation,~~ and payment of the license or change fee as set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership.

(2) All manager changes shall be made with the board within ten (10) business days.

(3) No transfer of ownership interest in a salon shall take effect while the salon license to be transferred is the subject of ongoing disciplinary action pursuant to KRS 317A.145.

Section 16.~~[Section 14.]~~ School Licenses.

(1) Each person, firm, or corporation applying for a license to operate a school shall submit a School Application, provide the required items in Section 3(a) through (f) of this administrative regulation, and the applicable fee set forth in 201 KAR 12:260.

(2) The School Application shall be accompanied by:

(a) A proposed student contract listing all financial charges to enrolling students; and

(b) A proposed floor plan drawn to scale by a draftsman or architect.

(3) Each school shall comply with city, county, and state, zoning, building, and plumbing laws, administrative regulations and codes.

(4) Prior to license issuance and following the receipt of a completed application with all accompanying materials, the board inspector and executive director~~[board administrator]~~, or their designee shall conduct an inspection.

(5)

(a) The inspection shall be completed within twelve (12) months of the date that the School Application and all accompanying materials are received unless the board extends the time period for good cause. "good cause" includes:

1. An illness or medical condition of the applicant that prohibits the applicant from completing the final preparations; or

2. A death, illness, or medical condition in the applicant's

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immediate family that prohibits the applicant from completing the final preparations.

(b) Requests for an extension of time shall be submitted in writing to the board and include the following:

1. The reason for the extension and the term of the request; and
2. Supportive documentation of the extension request.

(6) A license to operate a school shall be valid only for the location and person, firm, or corporate owner named on the application. A school license shall not be transferable from one (1) location to another or from one (1) owner to another.

(7) The school license shall contain:

(a) The name of the proposed school; and

(b) A statement that the proposed school may operate educational programs beyond secondary education.

(8) Each licensed school shall maintain a board licensed instructor as school manager at all times.

(9) All newly licensed schools shall provide proof of initial application for accreditation within two (2) years of license issuance and become accredited through a US Department of Education approved cosmetology accreditation authority within five (5) years of license issuance. Enactment of this administrative regulation shall begin the timeline for all currently licensed schools.

(10) If accreditation requirements are not met in the required timeline the school license may be revoked.

Section 17.[Section 15.] Change in School Ownership or Management.

(1) The owners, firm, or corporation operating a licensed school shall submit to the board a new School Application or a Manager Change Form and payment of the applicable fee set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership.

(2) All manager changes shall be made with the board within ten (10) business days.

(3) A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A and 201 KAR Chapter 12, and obtain approval of the board prior to assuming operation of the school.

(4) A school shall not be opened under new ownership while the current owner still occupies the space.

(5) Written notice from current school owner including final closure date shall be provided to the board no less than ten (10) days prior to closure.

(6) All final student withdrawal and hours posting shall be required prior to new ownership licensing inspection being completed.

Section 18.[Section 16.] Classification as School. Any person, establishment, firm, or corporation that accepts, directly or indirectly, compensation for teaching any subject of cosmetology as defined in KRS 317A.010 shall comply with KRS Chapter 317A and 201 KAR Chapter 12.

Section 19.[Section 17.] Owner and Manager Student Prohibited. An owner, partner, stockholder, corporate officer, or a manager of a licensed school shall not be enrolled as a student in the school.

Section 20.[Section 18.] Board Member Disclosure. A board member shall disclose to the board a financial interest in a salon or school when submitting an application for a salon or school license.

[Section 19. Demonstration Permits. Professional services performed outside a licensed facility shall have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.]

Section 21.[Section 20.] Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Out of State Transfer Application", July 2022[April 2020];
- (b) "Military Transfer Application", July 2022[May 2020];
- (c) "Certification Request Form" July 2022[October 2018];

(d) ["Permit Application", December 2019];

(e) "Application for Examination", July 2022[June 2019];

(e) [(f)] "Out of State Application for Examination", July 2022[October 2018];

(f) [(g)] "License Application", July 2022[June 2019];

(h) "Apprentice-Instructor-License Application", June 2019];

(g) [(f)] "Duplicate License Application", July 2022[January 2019];

(h) [(f)] "Renewal Application", July 2022[January 2019];

(i) [(k)] "Restoration Application", July 2022[June 2019];

(j) [(h)] "Salon Application", July 2022[June 2019];

(k) [(m)] "Limited Facility [Permit]-Application", July 2022[April 2020];

(l) [(n)] "Manager Change Form", July 2022[October 2018]; and

(m) [(e)] "School Application", July 2022[October 2018]; and

(p) "Demonstration Permit Application", October 2018.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARGARET MEREDITH, Chair

APPROVED BY AGENCY: July 12, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022, at 9:30 a.m., at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for all examinations, licenses, and permits provided by the Kentucky Board of Cosmetology (KBC).

(b) The necessity of this administrative regulation: This amendment is necessary to establish the procedures to apply for examinations and licenses issued by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317A.050 requires KBC to issue licenses once certain statutory requirements are met. All applicants for any license type are required to submit the appropriate application for licensure. This administrative regulation conforms to KRS 317A.050 by establishing the content and supporting documentation necessary to apply for licensure. RS22 SB113 made changes creating the necessity or regulation amendments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides a specific process for any interested person to apply for a license to practice cosmetology, esthetics, shampoo and style, or nail technology in the Commonwealth, as well as facilities that educate and perform those 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: Amendment removes forms and details duplicated in other regulations for clarity and incorporates the requirements created in RS22 SB 113.

(b) The necessity of the amendment to this administrative

regulation: RS SB 113 created additional requirements for licensing and are addressed in this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides the necessary steps to apply for a license as authorized by KRS 317A.050.

(d) How the amendment will assist in the effective administration of the statutes: Through one concise administrative regulation, this amendment will facilitate the public's ability to apply for and receive the necessary examination and licensing to practice or teach cosmetology, esthetics, shampoo and style, or nail technology in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All students with finalized exam scores, approximately 5000 at any given time, are affected by this amendment as well as any current licensee- approximately 35,000 individuals at any given time 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: Students applying for a license will have to take additional action as a result of this amendment as will current licensees. Reporting of workplace allows more concise reporting on income and practice parameters. Required photographs help add a layer of security to reduce licensing fraud in the industry. These individuals were already required to submit an application pursuant to KRS 317A.050. This regulation merely states the documentation that had always been required to be submitted pursuant to the application instructions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no anticipated costs to the regulated entities due to this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional safety for consumers by holding license holders accountable for safety issues and school standards.

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

(a) Initially: no additional cost involved

(b) On a continuing basis: no additional cost involved

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees will continue to support agency and enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees will be required for licensing. Fees are all set in 201 KAR 12:260.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not set in this regulation and no new fees were created in this regulation.

(9) TIERING: Is tiering applied? Tiering does not occur in the agency. Operation is strictly from restricted licensing fees.

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? No additional agencies are affected by this regulation amendment. KBC is the only entity impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A is the prevailing statute providing authority to KBC. No federal oversight exists.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect. No revenues or expenditures will be necessary for other agencies.

(a) How much 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 or expenditures will be necessary for other agencies.

(b) How 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 revenues or expenditures will be necessary for other agencies.

(c) How much will it cost to administer this program for the first year? No revenues or expenditures will be necessary for other agencies.

(d) How much will it cost to administer this program for subsequent years? No revenues or expenditures will be necessary for other agencies.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: 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. No revenues or expenditures will be necessary for other agencies.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No revenues or expenditures will be necessary for other agencies.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No revenues or expenditures will be necessary for other agencies.

(c) How much will it cost the regulated entities for the first year? No revenues or expenditures will be necessary for other agencies.

(d) How much will it cost the regulated entities for subsequent years? No revenues or expenditures will be necessary for other agencies.

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

Cost Savings (+/-): N/A

Expenditures (+/-): N/A

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)] There is no major economic impact to any agency.

BOARDS AND COMMISSIONS

Board of Cosmetology

(Amendment)

201 KAR 12:060. Inspections.

RELATES TO: KRS 317A.060, 317A.140

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing the operation of any schools, limited facilities, and salons of cosmetology, nail technology, threading, eyelash artistry, makeup artistry, [and] esthetics, and to protect the health and safety of the public. This administrative regulation establishes inspection and health and safety requirements for all schools and salons of cosmetology, nail technology, threading, eyelash artistry, makeup artistry, and esthetics.

Section 1. Public Display.

(1)

(a) Each licensee or permit holder shall attach his or her picture to the license or permit and place it in an accessible and conspicuous area in the salon, limited facility, or school.

(b) Each licensed facility's license shall be posted in an accessible and conspicuous area with the information required by this subsection.

(2) A conspicuous area shall be visible to the public and shall include:

- (a) The main entrance door or window of the premises; and
- (b) The workstation of the employee.

(3) A salon or school manager shall have the manager's license posted with a picture in an accessible and conspicuous area at all times.

(4) A school shall, at all times, display in a centralized and accessible conspicuous public place the student permits of all students enrolled.

(5) Each licensed salon, limited facility, or school shall post the most recent inspection report in an accessible and conspicuous area.

Section 2. Inspections.

(1) Any board member, administrator, or inspector may enter any establishment licensed by this board or any place purported to be practicing cosmetology, nail technology, threading, eyelash artistry, makeup artistry, or esthetics, during reasonable~~normal~~ working hours or at any time when the establishment is open to the public, for the purpose of determining if an individual, salon, limited facility, or school is complying with KRS Chapter 317A and 201 KAR Chapter 12.

(2) A board member, administrator, or inspector may require the licensee or permittee to produce for inspection and copying books, papers, or records required by the board or pertaining to licensed activity.

(3) Each establishment licensed by the board shall be inspected a minimum of two (2) times per year.

(4) A salon, limited facility, or school shall schedule an inspection of the salon, limited facility, or school after an inspector twice attempts, but is unable, to inspect the salon or school.

(5) Failure of the salon, limited facility, or school owner or manager to schedule an inspection within thirty (30) days of two (2) consecutive failed inspection attempts shall constitute unprofessional conduct.

(6) The owner and manager of each establishment licensed by the board shall be responsible for compliance with KRS Chapter 317A and 201 KAR Chapter 12.

Section 3. Unprofessional Conduct. Unprofessional conduct under KRS 317A.140 includes the following:

(1) Intentionally withholding information or lying to a board member or board employee who is conducting a lawful inspection or investigation of an alleged or potential violation of KRS Chapter 317A or 201 KAR Chapter 12;

(2) A salon, limited facility, or school remaining open to the public if not appropriately licensed by the board;

(3) Providing or teaching any cosmetology, nail technology, esthetic, lash artistry, makeup artistry, or threading services unless appropriately licensed or permitted by the board under 201 KAR Chapter 12;

(4) Failure to comply with the lawful request of the board, ~~or~~the executive director~~board administrator~~, inspector, or agent for the following:

(a) Allow entry to perform an~~Permit~~ inspection of the licensed premises; or

(b) Allow the~~Permit~~ inspection of or the copying or production of books, papers, documents, or records of information or material pertaining to activity licensed by the board or related to the provisions of KRS Chapter 317A or the administrative regulations promulgated by the board; or

(c) Refusing to provide a valid state or federal government issued identification matching the posted license or permit; or

(d) Removal of any posted notice from the board pertaining to violations, inspection failures, or lack of licensure by the board.

(5) Any attempt by a license or permit holder to bribe a Kentucky

Board of Cosmetology representative or induce a board representative to violate a provision of KRS 317A or 201 KAR Chapter 12;

(6) Any attempt to fraudulently produce or duplicate board requested documents or licensure; or

(7) Any violation of the Code of Ethics as stated in 201 KAR 12:230.

Section 4. Signage. The main entrance to any establishment licensed by the board shall display a sign indicating a beauty salon, nail salon, esthetic salon, limited facility, or cosmetology school. The sign shall indicate the name of the salon, limited facility, or school as it is registered with the Kentucky Board of Cosmetology and shall be clearly visible at the main entrance of the establishment.

MARGARET MEREDITH, Board Chair

APPROVED BY AGENCY: July 12, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022, at 10:00 am, at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S. Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: Regulation outlines inspection process and requirements for posting and agency authority to enter a facility.

(b) The necessity of this administrative regulation: It is necessary to define authorities and required postings to ensure public awareness and compliance from licensees on documents pertinent to licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317A.060 requires the board to promulgate administrative regulations governing the operation of any schools, limited facilities, and salons of cosmetology, nail technology, threading, eyelash artistry, makeup artistry, esthetics, and to protect the health and safety of the public.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Posting of licensure, previous inspections, professional conduct and inspections provide public assurance of safety and accountability.

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

(a) How the amendment will change this existing administrative regulation: additional terms are outlined to continue to protect the public from unlicensed and unsafe practices.

(b) The necessity of the amendment to this administrative regulation: clarity and inclusive items from the prevailing statute are added for clarity.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 317A requires the board to promulgate safety standards to protect the public.

(d) How the amendment will assist in the effective administration of the statutes: this will allow staff to require proof of identity to reduce the fraud of unlicensed individuals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: All members of the public will be impacted by increased safety awareness in 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: No additional steps are necessary to comply with this regulation- a government issued id is a requirement of licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): no additional cost will be necessary.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public assurance that the individuals are licensed properly for safety in the industry.

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

(a) Initially: no additional costs

(b) On a continuing basis: no additional costs

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All funding for agency are from licensing fees and will remain that way.

(7) Provide an assessment of whether an 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 funds or fees are necessary.

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

(9) TIERING: Is tiering applied? No tiering is needed all funds are from a restricted source.

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? No additional agencies will be affected by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A is the prevailing authority statute there is no federal oversight on these items.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 additional revenue

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

(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 (+/-): N/A

Expenditures (+/-): N/A

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. No additional savings will occur and no additional expenditures

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? No additional

savings will be created.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings is created

(c) How much will it cost the regulated entities for the first year? No additional costs will occur

(d) How much will it cost the regulated entities for subsequent years? No additional costs.

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

Cost Savings (+/-): n/a

Expenditures (+/-): n/a

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)] There is no major economic impact associated with this regulation.

BOARDS AND COMMISSIONS Board of Cosmetology (Amendment)

201 KAR 12:082. Education requirements and school administration.

RELATES TO: KRS 317A.020, 317A.050, 317A.090

STATUTORY AUTHORITY: KRS 317A.060, 317A.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1)(h) requires the board to promulgate administrative regulations governing the hours and courses of instruction at schools of cosmetology, esthetic practices, and nail technology. KRS 317A.090 establishes licensing requirements for schools of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required for students and faculty for schools of cosmetology, esthetic practices, and nail technology.

Section 1. Subject Areas. The regular courses of instruction for cosmetology students shall contain courses relating to the subject areas identified in this section.

(1) Basics:

(a) History and Career Opportunities;

(b) Life Skills;

(c) Professional Image; and

(d) Communications.

(2) General Sciences:

(a) Infection Control: Principles and Practices;

(b) General Anatomy and Physiology;

(c) Skin Structure, Growth, and Nutrition;

(d) Skin Disorders and Diseases;

(e) Properties of the Hair and Scalp;

(f) Basic Chemistry; and

(g) Basics of Electricity.

(3) Hair Care:

(a) Principles of Hair Design;

(b) Scalp Care, Shampooing, and Conditioning;

(c) Hair Cutting;

(d) Hair Styling;

(e) Braiding and Braid Extensions;

(f) Wig and Hair Additions;

(g) Chemical Texture Services; and

(h) Hair Coloring.

(4) Skin Care:

(a) Hair Removal;

(b) Facials;

- (c) Facial Makeup; and
- (d) Application of Artificial Eyelashes.
- (5) Nails:
 - (a) Manicuring;
 - (b) Pedicuring;
 - (c) Nail Tips and Wraps;
 - (d) Monomer Liquid and Polymer Powder Nail Enhancements;[

and]

- (e) Light Cured Gels;
- (f) Nail Structure and Growth; and
- (g) Nail Diseases and Disorders.
- (6) Business Skills:
 - (a) Preparation for Licensure and Employment;
 - (b) On the Job Professionalism; and
 - (c) Salon Businesses.

Section 2. A school or program of instruction of any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall teach the students about the various supplies and equipment used in the usual salon practices.

Section 3. Instructional Hours.

(1) A cosmetology student shall receive not less than 1,500 hours in clinical class work and scientific lectures with a minimum of:

- (a) 375 lecture hours for science and theory;
- (b) 1,085 clinic and practice hours; and
- (c) Forty (40) hours on the subject of applicable Kentucky statutes and administrative regulations.

(2) A cosmetology student shall not perform chemical services on the public until the student has completed a minimum of 250 hours of instruction.

Section 4. Training Period for Cosmetology Students, Nail Technician Students, Esthetician Students, and Apprentice Instructors.

(1) A training period for a student shall be no more than eight (8) hours per day, forty (40) hours per week.

(2) A student shall be allowed thirty (30) minutes per eight (8) hour day or longer for meals or a rest break. This thirty (30) minute period shall not be credited toward a student's instructional hours requirement.

Section 5. Laws and Regulations.

(1) At least one (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A and 201 KAR Chapter 12.

(2) Schools or programs of instruction of any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall provide a copy of KRS Chapter 317A and 201 KAR Chapter 12 to each student upon enrollment.

Section 6. Nail Technician Curriculum. The nail technician course of instruction shall include the following:

- (1) Basics:
 - (a) History and Opportunities;
 - (b) Life Skills;
 - (c) Professional Image; and
 - (d) Communications.
- (2) General Sciences:
 - (a) Infection Control: Principles and Practices;
 - (b) General Anatomy and Physiology;
 - (c) Skin Structure and Growth;
 - (d) Nail Structure and Growth;
 - (e) Nail Diseases and Disorders;
 - (f) Basics of Chemistry;
 - (g) Nail Product Chemistry; and
 - (h) Basics of Electricity.
- (3) Nail Care:
 - (a) Manicuring;
 - (b) Pedicuring;
 - (c) Electric Filing;
 - (d) Nail Tips and Wraps;
 - (e) Monomer Liquid and Polymer Powder Nail Enhancements;

- (f) UV and LED Gels; and
- (g) Creative Touch.
- (4) Business Skills:
 - (a) Seeking Employment;
 - (b) On the Job Professionalism; and
 - (c) Salon Businesses.

Section 7. Nail Technology Hours Required.

(1) A nail technician student shall receive no less than 450 hours in clinical and theory class work with a minimum of:

- (a) 150 lecture hours for science and theory;
- (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
- (c) 275 clinic and practice hours.

(2) A nail technician student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

Section 8. Apprentice Instructor Curriculum. The course of instruction for an apprentice instructor of any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall include no less than 750 hours, 425 hours of which shall be in direct contact with students. 325 hours of the required theory instruction may be taken in person or online, in the following areas:

- (1) Orientation;
- (2) Psychology of student training;
- (3) Introduction to teaching;
- (4) Good grooming and professional development;
- (5) Course outlining and development;
- (6) Lesson planning;
- (7) Teaching techniques (methods);
- (8) Teaching aids, audio-visual techniques;
- (9) Demonstration techniques;
- (10) Examinations and analysis;
- (11) Classroom management;
- (12) Recordkeeping;
- (13) Teaching observation;
- (14) Teacher assistant; and
- (15) Pupil teaching (practice teaching).

Section 9. Supervision.

(1) An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor while providing any instruction for students [during the school day]. "Immediate supervision" in this instance means a licensed instructor is physically present in the same room and overseeing the activities of the apprentice instructor at all times.

(2) An apprentice instructor shall not assume the duties and responsibilities of a licensed supervising instructor.

(3) An apprentice instructor shall not teach any practices defined in KRS Chapter 317A or 201 KAR Chapter 12 outside of the board licensed school in which the individual is enrolled.

Section 10. Instructors Online Theory Course. All online theory instruction completed to comply with Section 8 of this administrative regulation shall be administered from an approved digital platform at a licensed Kentucky school of cosmetology, esthetic practices, or nail technology.

Section 11. Additional Coursework. Apprentice Esthetics and Nail Technology Instructors shall also complete an additional fifty (50) hours of advanced course work in that field within a two (2) year period prior to the instructor examination.

Section 12. Schools may enroll persons for a special supplemental course in any subject.

Section 13. Esthetician Curriculum. The regular course of instruction for esthetician students shall consist of courses relating to the subject areas identified in this section.

- (1) Basics:
 - (a) History and Career Opportunities;

- (b) Professional Image; and
- (c) Communication.
- (2) General Sciences:
 - (a) Infection Control: Principles and Practices;
 - (b) General Anatomy and Physiology;
 - (c) Basics of Chemistry;
 - (d) Basics of Electricity; and
 - (e) Basics of Nutrition.
- (3) Skin Sciences:
 - (a) Physiology and Histology of the Skin;
 - (b) Disorders and Diseases of the Skin;
 - (c) Skin Analysis; and
 - (d) Skin Care Products: Chemistry, Ingredients, and Selection.
- (4) Esthetics:
 - (a) Treatment Room;
 - (b) Basic Facials;
 - (c) Facial Massage;
 - (d) Facial Machines;
 - (e) Hair Removal;
 - (f) Advanced Topics and Treatments;
 - (g) Application of Artificial Eyelashes; and
 - (h) Makeup.
- (5) Business Skills:
 - (a) Career Planning;
 - (b) The Skin Care Business; and
 - (c) Selling Products and Services.

Section 14. Esthetician Hours Required.

- (1) An esthetician student shall receive no less than 750 hours in clinical and theory class work with a minimum of:
 - (a) 250 lecture hours for science and theory;
 - (b) Thirty-five (35) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) 465 clinic and practice hours.
- (2) An esthetician student shall have completed 115 hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first 115 hours.

Section 15. Shampoo Styling~~[Blow-Drying Services]~~ License Subject Areas. The regular courses of instruction for blow drying services license students shall contain courses relating to the subject areas identified in this section.

- (1) Basics:
 - (a) History and Career Opportunities;
 - (b) Life Skills;
 - (c) Professional Image; and
 - (d) Communications.
- (2) General Sciences:
 - (a) Infection Control: Principles and Practices;
 - (b) General Anatomy and Physiology of head, neck, and scalp;
 - (c) Skin Disorders and Diseases of head, neck, and scalp;
 - (d) Properties of the Hair and Scalp; and
 - (e) Basics of Electricity.
- (3) Hair Care:
 - (a) Principles of Hair Design;
 - (b) Scalp Care, Shampooing, and Conditioning;
 - (c) Hair Styling;
 - (d) Blow drying;
 - (e) Roller Placement;
 - (f) Finger waves or pin curls;
 - (g) Thermal curling;
 - (h) Flat iron styling;
 - (i) Wig and Hair Additions; and
 - (j) Long hair styling.
- (4) Business Skills:
 - (a) Preparation for Licensure and Employment;
 - (b) On the Job Professionalism; and
 - (c) Salon Businesses.

Section 16. Shampoo Styling~~[Blow-Drying Services]~~ License Hours Required.

- (1) A shampoo styling~~[blow-drying]~~ services license student shall

receive no less than 300~~[400]~~ hours in clinical and theory class work with a minimum of:

- (a) 100~~[450]~~ lecture hours for science and theory;
 - (b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
 - (c) 175~~[275]~~ clinic and practice hours.
- (2) A shampoo styling~~[blow-drying]~~ services license student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

Section 17. Extracurricular Events. Each cosmetology, nail technician, and esthetician student shall be allowed up to sixteen (16) hours for field trip activities pertaining to the profession of study, sixteen (16) hours for attending educational programs, and sixteen (16) hours for charitable activities relating to the field of study, totaling not more than forty-eight (48) hours and not to exceed eight (8) hours per day. Attendance or participation shall be reported to the board within ten (10) business days of the field trip, education show, or charitable event on the Certification of Student Extracurricular Event Hours form.

Section 18. Student Records. Each school shall:

- (1) Maintain a legible and accurate daily attendance record used only for the verification and tracking of the required contact hours for education for all full-time students, part-time students, and apprentice instructors with records that shall be recorded using a digital biometric time keeping program as follows:
 - (a) All beginning, end, break, and lunch times shall be recorded; and
 - (b) All instructors shall comply with the biometric time keeping system.
- (2) Keep a record of each student's practical work and work performed on clinic patrons;
- (3) Maintain a detailed record of all student enrollments, withdrawals, and dismissals for a period of five (5) years; and
- (4) Make records required by this section available to the board and its employees upon request.

Section 19. Certification of Hours.

- (1) Schools shall forward to the board digital certification of a student's hours completed within ten (10) business days of a student's withdrawal, dismissal, completion, or the closure of the school.
- (2) No later than the 10th day of each month, a licensed school shall submit to the board via electronic delivery a certification of each student's or apprentice instructor's total hours obtained for the previous month and the total accumulated hours to date for all individuals~~[students]~~ enrolled. Amended reports shall not be accepted by the board without satisfactory proof of error. Satisfactory proof of error shall require, at a minimum, a statement signed by the school manager certifying the error and the corrected report.

Section 20. No Additional Fees. Schools shall not charge the enrolled individual~~[students]~~ additional fees beyond the agreed upon contracted amount.

Section 21. Instructor Licensing and Responsibilities.

- (1) A person employed by a school or program for the purpose of teaching or instruction shall be licensed by the board as an instructor and shall post his or her license as required by 201 KAR 12:060.
- (2) A licensed instructor or apprentice instructor shall supervise all students during a class or practical student work.
- (3) An instructor or apprentice instructor shall render services only incidental to and for the purpose of instruction.
- (4) Licensed schools shall not permit an instructor or apprentice instructor to perform services in the school for compensation~~[during school hours]~~.
- (5) An instructor shall not permit students to instruct or teach other students in the instructor's absence.
- (6) Except as provided in subsection (7) of this section, schools

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may not permit a demonstrator to teach in a licensed school.

(7) A properly qualified, licensed individual may demonstrate a new process, preparation, or appliance in a licensed school if a licensed instructor is present.

(8) Licensed schools or programs of instruction in any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall, at all times, maintain a minimum faculty to student ratio of one (1) instructor for every twenty (20) students enrolled and supervised.

(9) Licensed schools or programs of instruction in any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall, at all times, maintain a minimum ratio of one (1) instructor for every two (2) apprentice instructors enrolled and supervised.

(10) Within ten (10) business days of the termination, employment, and other change in school faculty personnel, a licensed school shall notify the board of the change.

(11) All instructors on staff within a licensed school shall be designated as full time, part time, or substitute instructors to the board when reporting employment.

Section 22. School Patrons.

(1) All services rendered in a licensed school to the public shall be performed by students. Instructors may teach and aid the students in performing the various services.

(2) A licensed school shall not guarantee a student's work.

(3) A licensed school shall display in the reception room, clinic room, or any other area in which the public receives services a sign to read: "Work Done by Students Only." The letters shall be a minimum of one (1) inch in height.

Section 23. Enrollment.

(1) Any person enrolling in a school or program for instruction in any practice licensed or permitted in KRS Chapter 317A or 201 KAR Chapter 12 shall furnish proof that the applicant has:

(a) A high school diploma,

(b) A General Educational Development (GED) diploma; or

(c) Results from the Test for Adult Basic Education indicating a score equivalent to the successful completion of the twelfth grade of high school.

(d) Apprentice Instructors shall provide proof of individual licensure issued at minimum one (1) year prior to enrollment date to demonstrate compliance with the applicable requirements set forth in KRS 317A.050.

(2) The applicant shall provide with the enrollment a passport photograph taken within thirty (30) days of submission of the application.

(3) A student or apprentice instructor enrolling in a licensed school who desires to transfer hours from an out of state school shall, prior to enrollment, provide to the board certification of the hours to be transferred from the state agency that governs the out of state school.

(4) If the applicant is enrolled in a board approved program at an approved Kentucky high school, the diploma, GED, or equivalency requirement of this section is not necessary until examination.

(5) All enrollments shall be accompanied by the proper fee as defined in 201 KAR 12:260.

Section 24. Certificate of Enrollment.

(1) Schools shall submit to the board [the student's] a digital enrollment, accompanied by the applicant's proof of education and proof of licensure if enrolling as an apprentice instructor, as established in Section 23 of this administrative regulation, within ten (10) business days of enrollment.

(2) All [student] identification information submitted on the school's digital enrollment shall exactly match a state or federal government-issued identification card to take the examination. If corrections shall be made, the school shall submit the Enrollment Correction Application digitally and the enrollment correction fee in 201 KAR 12:260 within ten (10) days of the erroneous submission. Students with incorrect enrollment information shall not be registered for an examination.

Section 25. Student Compensation.

(1) Schools shall not pay a student a salary or commission while the student is enrolled at the school.

(2) Licensed schools shall not guarantee future employment to students.

(3) Licensed schools shall not use deceptive statements and false promises to induce student enrollment.

(4) An apprentice instructor may receive compensation as a teaching assistant.

Section 26. Hours of Operation. All schools shall report hours of operation to the board. Any change of hours or closures shall be reported no less than ten (10) business days in advance of change or closure.

Section 27. Transfers. An individual[A student] desiring to transfer to another licensed school shall:

(1) Within ten (10) days, notify[Notify] the school in which the individual[student] is presently enrolled of the [student's] withdrawal in writing; and

(2) Complete a digital enrollment as required for the new school.

Section 28.[Section 27.] Refund Policy. A school shall include the school's refund policy in all enrollment[school student] contracts.

Section 29.[Section 28.] Student Complaints. A student or apprentice instructor may file a complaint with the board concerning the school in which the individual[student] is enrolled, by following the procedures outlined in 201 KAR 12:190.

Section 30.[Section 29.] Student Leave of Absence. The school shall report an individual's[a student's] leave of absence to the board within ten (10) business days. The leave shall be reported:

(1) In writing from the individual[student] to the school; and

(2) Clearly denote the beginning and end dates for the leave of absence.

Section 31.[Section 30.] Student Withdrawal. Within ten (10) business days from a student or apprentice instructor's[student's] withdrawal, a licensed school shall report the name of the withdrawing individual [student] to the board.

Section 32.[Section 31.] Credit for Hours Completed. The board shall credit hours previously completed in a licensed school as follows:

(1) Full credit (hour for hour) for hours completed within five (5) years of the date of school enrollment; and

(2) No credit for hours completed five (5) or more years from the date of school enrollment.

Section 33.[Section 32.] Program Transfer Hours. An individual transferring valid hours between board licensed schools or[If] a current licensee choosing[chooses] to enroll[enter] into a licensed school to learn the practice of cosmetology, esthetics, shampoo styling or nail technology[they] shall complete and submit the Program Hour Transfer Request form. With exceptions as listed in subsection 1 through 4 of this section an individual shall not transfer hours from one discipline to another. Upon receiving a completed Program Hour Transfer Request form, the board shall treat the transferred valid hours or license as earned credit hours in a cosmetology program subject to the following:

(1) Transfer of a current esthetics license shall credit the transferee no more than 400 hours in a cosmetology program;

(2) Transfer of a current nail technologist license shall credit the transferee no more than 200 hours in a cosmetology program;

(3) Transfer of a current shampoo styling[blow drying services] license shall credit the transferee no more than 300 hours in a cosmetology program; or

(4) Transfer of a current barber license shall credit the transferee no more than 750 hours in a cosmetology program.

(5) Credit hours transferred pursuant to this section shall only take effect upon the transferee's completion of the remaining hours necessary to complete a cosmetology program.

Section 34.~~[Section 33.]~~ Emergency Alternative Education. Digital theory content may be administered by a licensed school if forced long-term or intermittent emergency closure or closures are due to a world health concern or crisis as cited by national or state authority. The board may determine when emergency alternative education shall begin and end based on the effect of the state of emergency on education standards and shall make determinations in compliance with state and national declarations of emergency. The necessary compliance steps for implementation are:

- (1) Full auditable attendance records shall be kept showing actual contact time spent by a student in the instruction module.
- (2) Milady or Pivot Point supported digital curriculum platforms or recorded video conference participation shall be used.
- (3) Schools shall submit an outline to the board within ten (10) days prior to the occurrence of the alternative education defining the content scope to be taught or completed, and a plan for a transition into a digital training environment. Plans may be submitted for approval by the board to be kept for future use if emergency alternative education is allowable.
- (4) Completion certificates showing final scoring on digital modules shall be maintained in student records.
- (5) Schools and students shall comply with Section 4 of this administrative regulation on accessible hours.
- (6) No student shall accrue more than the total required theory instruction hours outlined in the instructional sections in emergency alternative education time as established in Sections 3(1)(a), 7(1)(a), 14(1)(a) and 16(1)(a) of this administrative regulation.
- (7) The board may determine eligibility for accruals based on duration of the crisis and applicable time limits for alternative emergency education availability.

Section 35.~~[Section 34.]~~ Incorporation by Reference. The following material is incorporated by reference:

- (1)
 - (a) "Certification of Student Extracurricular Event Hours", July 2022~~[October 2018]~~;
 - (b) "Enrollment Correction Application", July 2022~~[October 2018]~~; and
 - (c) "Program Hour Transfer Request Form", July 2022~~[April 2020]~~.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 1049 US Hwy 127 S, Annex #2~~[141 St. James Court, Suite A.]~~ 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 kbc.ky.gov.

MARGARET MEREDITH, Board Chair

APPROVED BY AGENCY: July 12, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022, at 10:30 am, at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative

regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions for licensed schools of cosmetology, esthetics, and nail technology in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure standardized education that complies with state statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to all aspects of KRS 317A.050 and 317A.090.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines and defines education standards and the quantity of course hours required for licensed schools and students seeking Kentucky licensure by the board.

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

(a) How the amendment will change this existing administrative regulation: Amendment provides adjusted hours requirements for a license and clarifies registration process for apprentice instructors per SB 113.

(b) The necessity of the amendment to this administrative regulation: Amendment is necessary to conform to SB 113.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides additional education options for currently licensed schools.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated regulatory scheme for licensed schools that complies with the governing statute as adjusted in SB113.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 58 licensed cosmetology schools and this will only affect those facilities and any individuals planning on opening a school.

(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: Adjustment in process for apprentice instructor enrollment and a reduction in hours for shampoo styling licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No changes or increases in fees are anticipated as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A more rapid turnover of students will happen with the hours reduction in shampoo styling and an easier path for apprentice instructor's enrollment.

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

- (a) Initially: no costs for initial adjustments
- (b) On a continuing basis: no additional costs necessary for adjustments

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional funding requirements for this adjustment.

(7) Provide an assessment of whether an 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 will be needed to implement the adjustments in this regulation.

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

(9) TIERING: Is tiering applied? There is no tiering for this regulation as there are no additional oversights or funding outside of agency restricted funds.

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? Kentucky Board of Cosmetology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050 and KRS 317A.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no anticipated effect on state or local government agency revenue as a result of this amendment.

(a) How much 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 additional revenue is anticipated as a result of this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue is anticipated as a result of this amendment.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs are need 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 (+/-): N/A

Expenditures (+/-): N/A

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? There will not be a cost savings for the regulated entities for the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? There will not be a cost savings for subsequent years for the regulated entities.

(c) How much will it cost the regulated entities for the first year? It will not create an additional cost to regulate for the first year.

(d) How much will it cost the regulated entities for subsequent years? It will not create additional cost 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 (+/-): N/A

Expenditures (+/-): N/A

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)]. There is not major economic impact for this regulation adjustment.

BOARDS AND COMMISSIONS
Board of Cosmetology
(Amendment)

201 KAR 12:190. Complaint and disciplinary process.

RELATES TO: KRS 317A.070, 317A.140, 317A.145

STATUTORY AUTHORITY: KRS 317A.060, 317A.145

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.145

authorizes the board to investigate complaints and, where appropriate, take disciplinary action for violations of KRS Chapter 317A and the administrative regulations promulgated by the board. KRS 317A.070 requires the board to hold hearings to review the board's decision upon the request of any licensee or applicant affected by the board's decision to refuse to issue or renew a license or permit, or to take disciplinary action against a license or permit. This administrative regulation establishes the board's complaint and disciplinary process.

Section 1. Definitions.

(1) "Complaint" means any writing received or initiated by the board alleging conduct by an individual or entity that may constitute a violation of KRS Chapter 317A or 201 KAR Chapter 12.

(2) "Respondent" means the person or entity against whom a complaint has been made.

Section 2. Complaint Committee. The board may appoint a committee of no more than two (2) board members to review complaints, initiate investigations, participate in informal proceedings to resolve complaints, and make recommendations to the board for disposition of complaints. The board staff and board counsel may assist the committee.

Section 3. Complaint Procedures.

(1) Complaints shall be submitted on the board's Complaint Form, signed by the person making the complaint, and describe with sufficient detail the alleged violation(s) of KRS Chapter 317A, or 201 KAR Chapter 12. The Complaint Form shall be made available on the board's Web site at <http://kbc.ky.gov>.

(2) A copy of the complaint shall be provided to the respondent. The respondent shall have ten (10) days from the date of receipt to submit a written response. The complaints committee or the executive director[board administrator] may extend these timelines as appropriate.

(3) The complaint committee shall meet at regular intervals[once a month]. A complaint and any written response shall arrive ten (10) days prior to the meeting to meet the[that month's] deadline for making a recommendation to the board. The complaint committee shall review the complaint, the response, and any other relevant information or material available, and recommend that the board:

- (a) Dismiss the complaint;
- (b) Order further investigation;
- (c) Issue a written admonishment for a minor violation; or
- (d) Issue a notice of disciplinary action informing the respondent

of the following:

- 1. The statute(s) or administrative regulation(s) violated;
- 2. The factual basis for the disciplinary action;
- 3. The penalty to be imposed; and
- 4. The licensee's or permittee's right to request a hearing.

(4) A written admonishment shall not be considered disciplinary action by the board, but may be considered in any subsequent disciplinary action against the licensee or permittee. A copy of the written admonishment shall be placed in the licensee or permittee's file at the board office.

(5) If the board determines that a person or entity is engaged in the unlicensed practice of cosmetology, esthetics practices, or nail technology, the board may:

(a) Issue to the person or entity a written request to voluntarily cease the unlicensed activity; or

(b) Seek injunctive relief in a court of competent jurisdiction pursuant to KRS 317A.020(7).

(6) Any board member who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint, which could influence an impartial decision, shall disqualify himself or herself from participating in the adjudication of the complaint.

Section 4. Settlement by Informal Proceedings.

(1) The board, through its complaints committee or counsel, may, at any time during this process, resolve the matter through informal means, including an agreed order of settlement or mediation.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the respondent and board chair, or the chair's designee.

Section 5. Hearings.

(1) A written request made by the respondent for a hearing shall be filed with the board within thirty (30) days of the date of the board's notice that it intends to refuse to issue or renew a license or permit, to deny, suspend, probate, or revoke a license or permit, or to impose ~~discipline~~~~[a fine]~~ on a licensee or permittee.

(2) If no request for a hearing is filed, the board's refusal to issue or renew a license or permit, or the board's notice of disciplinary action, shall become effective upon the expiration of the time to request a hearing.

Section 6. Incorporation by Reference.

(1) "Complaint Form", July 2022~~[April 2018]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Cosmetology, 1049 US Hwy 127 S. Annex #2,~~[111 St. James Court, Suite A.]~~ Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARGARET MEREDITH, Board Chair

APPROVED BY AGENCY: July 12, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022, at 11:30 a.m., at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S. Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the complaint and investigations process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the needed investigation and complaint process to be followed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is being drafted to clarify complaints and investigation processes as set forth in Chapter 13 of KRS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the details of the complaint form and process for concerns with licensees.

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

(a) How the amendment will change this existing administrative regulation: The amendment will clarify complaint processes and investigation details

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify details and compliance standards as required in KRS 317A for complaint processes.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation provides guidelines for

complaint details as required in current statutory requirements in KRS 317A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will specify clearer details on complaint compliance to promote continuity across board changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There will be no impact to licensees, businesses, organizations, or state or local governments.

(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 does not impose any requirements on regulated entities.

(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 cost to licensees because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The details of esthetic restrictions.

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

(a) Initially: No additional funds are necessary initially to implement this administrative regulation.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis 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: Current funding will not 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: No changes or increases in fees is required by this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation does not impose any requirements on current or prospective licensees.

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? Kentucky Board of Hairdressers and Cosmetologists.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050, KRS 317A.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? No funds will be raised.

(b) How 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 funds will be raised.

(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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable

(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?

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

(c) How much will it cost the regulated entities for the first year?

(d) How much will it cost the 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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

(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 regulation does not create a major economic impact.

BOARDS AND COMMISSIONS

Board of Cosmetology (Amendment)

201 KAR 12:230. Code of ethics.

RELATES TO: KRS 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to establish a code of ethics for all persons and entities issued a license or permit by the board. This administrative regulation establishes the required code of ethics.

Section 1. Code of Ethics. A licensee or permittee shall:

(1) Provide competent professional services to the consumer;

(2) Provide a clear explanation of the services offered and the cost of those services;

(3) Follow appropriate disinfection and sanitation requirements as established in KRS Chapter 317A and 201 KAR 12:100;

(4) Follow proper health profile procedures before application of the product;

(5) Perform a thorough service evaluation and consultation for each client to determine if the procedure or product is appropriate before application;

(6) Discuss and outline realistic expectations with the client after the evaluation; and

(7) Provide all services[Treat all clients] with courtesy and respect.

MARGARET MEREDITH, Board Chair

APPROVED BY AGENCY: July 12, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, at 2:00, at Kentucky Board of Cosmetology. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on September 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S. Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the code of ethics to be maintained by all licensees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the required code of ethics mandated by KRS Chapter 317A

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is being amended to remove statutory reference to a repealed chapter of KRS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will update language for compliance of code of ethics to include all practices not just client relationships.

(2) If 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 clarify a necessary statement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to amend the statutory authority and clean up language.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides guidelines for the code of ethics to be maintained by all licensees as required in current statutory requirements in KRS 317A.

(d) How the amendment will assist in the effective administration of the statutes: Compliance of the statutory mandate in Chapter 317A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There will be no impact to licensees, businesses, organizations, or state or local governments.

(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 does not impose any requirements on regulated entities.

(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 cost to licensees because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): higher ethical standards in the industry.

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

(a) Initially: No additional funds are necessary initially to implement this administrative regulation.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis 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: Current funding will not 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: No changes or increases in fees is required by this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation does not impose any requirements on

current or prospective licensees.

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? Kentucky Board of Cosmetology is the only agency affected. No other areas of state or local government are affected by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A is the only statute that authorizes this action.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no expenditures needed or required by other agencies.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is a possibility of local occupational or income taxes to be collected as more individuals are placed in the workforce with these permits.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There is a possibility of income taxes to be collected as more individuals are placed in the workforce with these permits.

(c) How much will it cost to administer this program for the first year? It will not cost any additional revenue for state or local governments.

(d) How much will it cost to administer this program for subsequent years? It will not cost any additional revenue for state or local governments.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: 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. There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

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

(c) How much will it cost the regulated entities for the first year? There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

(d) How much will it cost the regulated entities for subsequent years? There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

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

Cost Savings (+/-): N/A

Expenditures (+/-): N/A

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)] There will not be any major economic impact for any entities.

BOARDS AND COMMISSIONS
Board of Cosmetology
(Amendment)

201 KAR 12:260. Fees.

RELATES TO: KRS 317A.050, 317A.062

STATUTORY AUTHORITY: KRS 317A.062

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.062

requires the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations and the issuance, renewal, and restoration of licenses and permits. This administrative regulation establishes a fee schedule for applications, permits, and licenses issued by the board.

Section 1. The initial license fees shall be as follows:

- (1) Cosmetologist - fifty (50) dollars;
- (2) Nail technician - fifty (50) dollars;
- (3) Esthetician - fifty (50) dollars;
- (4) Shampoo Styling~~[Blow-drying]~~ services - fifty (50) dollars;
- (5) Cosmetology instructor - fifty (50) dollars;
- (6) Esthetic instructor - fifty (50) dollars;
- (7) Nail Technology instructor - fifty (50) dollars;
- (8) Beauty salon - \$100;
- (9) Nail salon - \$100;
- (10) Esthetic salon - \$100;
- (11) School - \$1,500;
- (12) School transfer of ownership - \$1,500;
- (13) Salon transfer of ownership - \$100;
- (14) Limited facility license for a limited beauty salon, threading facility, eyelash artistry facility, and makeup facility - \$100;
- (15) Threading permit - fifty (50) dollars;
- (16) Eyelash Artistry Permit - fifty (50) dollars; and
- (17) Makeup Artistry Permit - fifty (50) dollars.
- (18) Event Services Permit - \$100.
- (19) Homebound Care Permit - \$100.

Section 2. The renewal license fees shall be as follows:

- (1) Cosmetologist - fifty (50) dollars;
- (2) Nail technician - fifty (50) dollars;
- (3) Esthetician - fifty (50) dollars;
- (4) Shampoo Styling~~[Blow-drying]~~ services - fifty (50) dollars;
- (5) Cosmetology instructor - fifty (50) dollars;
- (6) Esthetic instructor - fifty (50) dollars;
- (7) Nail Technology instructor - fifty (50) dollars;
- (8) Beauty salon - \$100;
- (9) Nail salon - \$100;
- (10) Esthetic salon - \$100;
- (11) School - \$250;
- (12) Limited facility license for a limited beauty salon, threading facility, eyelash artistry facility, and makeup facility - \$100;
- (13) Threading permit - fifty (50) dollars;
- (14) Eyelash Artistry Permit - fifty (50) dollars; and
- (15) Makeup Artistry Permit - fifty (50) dollars.
- (16) Event Services Permit - \$100.
- (17) Homebound Care Permit - \$100.

Section 3. Applications for examination including retake applications shall be accompanied by a fee as follows:

- (1) Cosmetologist - eighty-five (85)~~[seventy-five (75)]~~ dollars;
- (2) Nail technician - eighty-five (85)~~[seventy-five (75)]~~ dollars;
- (3) Esthetician - eighty-five (85)~~[seventy-five (75)]~~ dollars;
- (4) Shampoo Styling~~[Blow-drying]~~ services - eighty-five (85)~~[seventy-five (75)]~~ dollars; and
- (5) Instructor - eighty-five (85)~~[seventy-five (75)]~~ dollars.

Section 4. Miscellaneous fees shall be as follows:

- (1) Demonstration permit - fifty (50) dollars;
- (2) Certification for an out-of-state license or school hours transfer - twenty-five (25) dollars;
- (3) Duplicate license - twenty-five (25) dollars;
- (4) Salon manager change - fifty (50) dollars;
- (5) School manager change - fifty (50) dollars;

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(6) Enrollment correction fee, as established in 201 KAR 12:082, Section 24(2) - fifteen (15) dollars;

(7) Out of state endorsement application fee - \$100;

(8) Apprentice instructor enrollment - twenty-five (25)~~[fifty (50)]~~ dollars;

(9) Student enrollment~~[permit]~~ - twenty-five (25) dollars;

(10) Individual license restoration fee - fifty (50) dollars;

(11) Salon license restoration fee, or limited facility permit~~[license]~~ restoration fee for a limited beauty salon, threading facility, eyelash artistry facility, and makeup facility - \$100;

(12) School license restoration fee - \$500; and

(13) School or Salon location change - \$100.

MARGARET MEREDITH, Board Chair

APPROVED BY AGENCY: July 12, 2022

FILED WITH LRC: July 12, 2022 at 2:240 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022, at 1:00 pm, at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S. Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a fee schedule for all applications, permits, and licenses issued by the Kentucky Board of Cosmetology (KBC).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out a fee schedule for all persons and entities seeking a permit or license from the KBC.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment adjusts some existing fees for those permits and licenses set forth in KRS Chapter 317A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment adjusts existing fees for the issuance, renewal, and restoration of licenses and permits, board exams, and other miscellaneous fees of the KBC.

(2) If 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 KBC is entirely self-funded through fees it collects for the various applications, permits, and licenses it offers to the public. There was only a minor increase to exam fees to help maintain balance on the new contract for exams and establish a fee structure for the new permits in SB 113.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implementation of a fee for new permits in SB 113 and adjust exam fees to cover new contract costs.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth all KBC fees based on the current statutory requirements in KRS Chapters 317A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides a single administrative regulation setting out all applicable fees for applications, permits, and licenses issued by the KBC.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: There are approximately 38,000 licensees, permittees, and students 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: This amendment does not change any existing requirements, or create a new requirement. Rather, it amends the previous fee schedule contained in the existing administrative regulation and adds the permits implemented by SB 113.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An adjustment to fees is necessary in a few areas to establish new fee structures for permits defined in SB 113.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prospective and current licensees will benefit from a reduction in some fees and clarity in others.

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

(a) Initially: No additional funds are necessary initially to implement this amendment.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KBC is entirely self-funded through fees it collects for permits and licenses. There are no funds necessary to implement this amendment as it updates a fee schedule for applications, permits, and licenses.

(7) Provide an assessment of whether an 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 funding needed, as this amendment and the existing administrative regulation do not implement any action or requirement.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment sets forth fees for licensing based on the current statutory requirements found in KRS Chapters 317A. This amendment implements fees for new permit types as created in SB 113.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this amendment apply equally to all current and prospective licensees.

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 Board of Cosmetology (KBC).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.062.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 KBC is a self-funded agency, deriving its funding solely from the fees it collects for permits and licenses. This amendment modifies the fee schedule in the existing administrative regulation. It is expected to result in an increase in revenue during the first year. Increased revenue is necessary to fund national testing and to implement new permits brought about by the passage of SB 113. Finally, increased funding is necessary for new initiatives such as offering fully online applications and renewals and additional fees for contracts on national exams.

(b) How 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 expected to result in very little increased revenue in subsequent years, which will be used to fund new initiatives.

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

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated 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 (+/-): Increase.

Expenditures (+/-): No impact.

Other Explanation: This amendment updates fees and does not involve any expenditures. As explained above, the fee adjustments in this amendment are anticipated to result in increased revenue. The amount of increased revenue is dependent on the number of applicants for examinations, permits, and licenses. As some of the permits are newly established by SB 113, the expected amount of increased revenue for those new permits and licenses is currently unknown. Taking into account additional expenditures incurred from new licenses, permits, and national testing, it is anticipated that the increase in fees for existing examinations, permits, and licenses will not result in an increase in revenue.

(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. There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

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

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

(c) How much will it cost the regulated entities for the first year?

(d) How much will it cost the 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 (+/-):

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)]. There is not a major economic impact created by the adjustments of these fees.

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.

RELATES TO: KRS 314.041(1), 314.111(1), 314.111(5), 314.131

STATUTORY AUTHORITY: KRS 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(1) 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.

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. Number of Students Enrolled[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) There shall be no limit on the number of students who may attend a program of nursing if the program of nursing meets:

(a) the requirements of KRS 314.111(5); and

(b) the benchmarks set out in 201 KAR 20:360, Section 5(2)(f).

~~[(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;~~

~~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 that it has met the benchmarks set out in 201 KAR 20:360, Section 5(2)(f).]~~

(3)(a) A program of nursing that meets the requirements set out in subsection (2) of this section may increase its enrollment without limitation.

(b) A program of nursing shall report any increase in enrollment to the board.

[(a) The request shall be reviewed by board staff. Board staff may approve the request if it is determined that the criteria listed in subsection (2) of this section have been met.

(b) If board staff determines that the criteria listed in subsection (2) of this section have not been met, the request shall be referred to the board for further consideration and a decision.]

(4)(a) The board may impose a limit on the number of students

attending a program of nursing that does not meet the requirements of subsection (2) of this section.

(b) The board may deny an increase in enrollment for a program of nursing that does not meet the requirements of subsection (2) of this section.

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.

(4) A governing institution that has extended its main campus to a new campus during the period 201 KAR 20:260E was in effect, from January 11, 2022 to October 8, 2022, shall take the necessary steps to comply with 201 KAR 20:280. The process shall begin within thirty (30) days of the effective date of this administrative regulation.

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.

JESSICA WILSON, President

APPROVED BY AGENCY: June 16, 2022

FILED WITH LRC: June 22, 2022 at 9:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2022 at 10:00 a.m. at Kentucky Board of Nursing, 312

Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 2022, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, cell (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: It deletes provisions inconsistent with SB 10 (2022 Regular Session) and conforms to the new requirements of SB 10 for the number of students enrolled in a program of nursing. It also sets requirements for new programs of nursing opened during the period the emergency regulation was in effect.

(b) The necessity of the amendment to this administrative regulation: It is required by SB 10.

(c) How the amendment conforms to the content of the authorizing statutes: By deleting inconsistent provisions and adding new language to conform to the requirements of SB 10.

(d) How the amendment will assist in the effective administration of the statutes: By complying with SB 10.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure RN and LPN programs of nursing, approximately 100.

(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 have to report the number of students enrolled as well as the number to be increased to the Board. New programs opened during the period the emergency regulation was in effect will have to comply with 201 KAR 20:280.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is impossible to determine the cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will no longer have a limit on the number of students they may enroll as long as they meet standards.

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

(a) Initially: It is impossible to determine the cost. However, it is anticipated that all costs will be subsumed in the general operating budget.

(b) On a continuing basis: Same answer as (a).

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

implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable since the changes affect all 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? Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? It is impossible to determine.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? It is impossible to determine.

(c) How much will it cost the regulated entities for the first year? It is impossible to determine.

(d) How much will it cost the regulated entities for subsequent years? It is impossible to determine.

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)] It does not.

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111, 314.475

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. This administrative regulation establishes standards for faculty of programs of nursing that prepare graduates for licensure as registered nurses or practical nurses.

Section 1. Definitions.

(1) "Clinical instructor" means a registered nurse who is employed by a program of nursing to provide students with traditional clinical or simulated experiences.

(2) "Nurse faculty" means a registered 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.

(3) "Nursing experience" means employment in a position that requires the individual to hold an active nursing license, such as nursing clinical practice, nursing administration, nursing education, or nursing research.

(4) "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.

(5) "Skills laboratory instructor" means a non-faculty instructor primarily assigned to a clinical skills or simulation laboratory who manages the daily operations of the skills laboratory or assists nursing faculty to implement student learning activities for the development of psychomotor nursing skills.

(6) "Unencumbered" means a license without current disciplinary conditions or restrictions. Enrollment in an alternative to discipline program is not an encumbrance.

Section 2. Faculty for Prelicensure Registered Nurse and Practical Nurse Programs.

(1)(a) The faculty shall include a program administrator and shall include at least one (1) other nurse faculty.

(b) The faculty shall be adequate in number to implement the curriculum as determined by program outcomes, course objectives, the level of the students, the number of students and classes admitted annually, and the educational technology utilized.

(c) The program administrator and all nurse faculty and clinical instructors shall be appointed by and be responsible to the governing institution of the program of nursing.

(d) A program shall develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each program location.

(2) Program administrator qualifications. The program administrator for a registered nurse or a practical nurse program shall have:

(a) A minimum of a master's or higher degree in nursing from an accredited college or university. In lieu of a master's degree, the program administrator shall have completed that portion of a doctoral degree that would be equivalent to a master's in nursing degree while enrolled in an accredited college or university with a timeline in place for degree attainment. The program administrator shall provide documentation that shows active and steady progression towards the doctoral degree;

(b) A minimum of five (5) years of nursing experience within the immediate past seven (7) years;

(c) A minimum of two (2) years of full time teaching experience at or above the academic level of the program of nursing;

(d) An unencumbered current license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth

of Kentucky;

(e) A current knowledge of nursing practice at the level of the program; and

(f) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation. A program administrator without previous program administrator experience shall have a mentor assigned by the governing institution and an educational development plan implemented. The mentor shall have documented experience in program administration.

(3) A program administrator who is currently employed at a practical nurse program and who does not meet the requirements of subsection 2(a) of this Section may continue to be employed at the program of nursing where the program administrator is presently, but shall earn the master's degree or higher in nursing on or before July 1, 2021.

(4) Didactic faculty qualifications.

(a) Didactic faculty in a registered nurse program shall meet the qualifications set out in KRS 314.111(6)(b), (c), or (d).

~~1. Nurse faculty in a prelicensure registered nurse program shall hold a degree from an accredited college or university, which shall include:~~

~~a. A master's degree within the discipline of nursing or have completed that portion that would be equivalent to a master's in nursing degree; or~~

~~b. A baccalaureate degree with a major in nursing and a master's degree in a related field, which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related master's degree.~~

~~2. Nurse faculty in an associate degree nursing program may be employed with a baccalaureate degree in nursing, but shall complete, within five (5) years of the date of employment, a master's degree commensurate with either clause a. or b. under subparagraph 1 of this paragraph.]~~

(b) Nurse faculty in a practical nurse program shall have a minimum of an associate[a baccalaureate] degree with a major in nursing from an accredited college or university.

(c) The nurse faculty shall hold a temporary work permit or a current unencumbered license or privilege to practice as a registered nurse in the Commonwealth of Kentucky.

(d) The nurse faculty shall document a minimum of two (2) years full time or equivalent experience as a registered nurse within the immediate past five (5) years and shall have and maintain expertise in the clinical or functional area of responsibility.

(e) The nurse faculty shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.

(f) Nurse faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.

(g)1. Non-nurse faculty members who teach nursing courses required within the curriculum shall have appropriate academic and experiential qualifications for the program areas in which they participate.

2. Non-nurse faculty shall be required to collaborate with a nurse faculty member in order to meet the nursing course outcomes.

(h) Nurse faculty who teach via distance or on-line shall hold an unencumbered active nursing license to practice as a registered nurse in the nurse faculty's primary state of residence.

(5) Skills laboratory and clinical instructor qualifications.

(a) A clinical instructor shall function under the guidance of the nurse faculty responsible for a given course.

(b) A clinical instructor for either a registered nurse or practical nurse program shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the state of the student's clinical site.

(c) A clinical instructor shall have a minimum of two (2) years full time or equivalent experience as a registered nurse within the immediate past five (5) years and evidence of clinical competence

appropriate to teaching responsibilities.

(d) For a registered nurse program, the clinical instructor shall meet the requirements of KRS 314.111(6)(a)~~[have the following qualifications:~~

~~1. For an associate degree nursing program, a registered nurse; or~~

~~2. For a baccalaureate degree nursing program, a registered nurse with a baccalaureate degree in nursing or higher].~~

(e) For a practical nurse program, the clinical instructor shall be a registered nurse.

(f) A skills laboratory instructor shall have the same qualifications as a clinical instructor.

Section 3. Preceptors. (1) A preceptor may be used to enhance clinical learning experiences. If a preceptor is used, it shall be done after a student has received clinical and didactic instruction from the program faculty in all basic areas for the course or specific learning experience.

(2) A preceptor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the state of the student's clinical site. In a practical nursing program, a preceptor may hold a current unencumbered license, privilege, or temporary work permit to practice as a licensed practical nurse in the state of the student's clinical site.

(3) A preceptor shall have evidence of clinical competencies related to the area of assigned clinical teaching responsibilities.

(4) A preceptor shall not be used to replace clinical instructors. The ratio of student to preceptor shall not exceed two (2) to one (1). Clinical instructors or nurse faculty retain responsibility for student learning and confer with the preceptor and student for the purpose of monitoring and evaluating learning experiences.

(5) There shall be documentation of orientation to the course, program outcomes, student learning objectives, evaluation methods to be utilized by the faculty, and documented role expectations of faculty, preceptor, and student.

Section 4. Reporting of Registered Nurse Program and Practical Nurse Program Faculty Qualifications and Appointments.

(1) Evaluation of faculty records. The program administrator shall submit to the board the qualifications of nurse faculty and clinical instructors within thirty (30) days of appointment.

(a) Official academic transcripts or copies verified by the nurse administrator or designee shall be available to the board upon request.

(b) A complete and official record of qualifications and workload for each faculty member shall be on file and available to the board upon request.

(c) Faculty appointments shall be reported to the board in writing.

(d) The program administrator shall report a change in faculty composition within thirty (30) days of appointment or vacancy.

(2) The board shall review annually the qualifications of the faculty employed in the program of nursing.

JESSICA WILSON, President

APPROVED BY AGENCY: June 16, 2022

FILED WITH LRC: June 22, 2022 at 9:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2022 at 10:00 a.m. at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 2022, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Jeffrey R. Prather, General Counsel,

VOLUME 49, NUMBER 2– AUGUST 1, 2022

Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, cell (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and requirements for faculty for prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards and requirements.

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

(a) How the amendment will change this existing administrative regulation: It references the new requirements for didactic faculty required by SB 10 (2022 Regular Session) and deletes inconsistent provisions.

(b) The necessity of the amendment to this administrative regulation: It is required by SB 10.

(c) How the amendment conforms to the content of the authorizing statutes: By referencing the faculty requirements in SB 10 and deleting inconsistent provisions.

(d) How the amendment will assist in the effective administration of the statutes: It will conform to the new statutory requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing, approximately 100; Nursing faculty, number unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Programs of nursing will have new faculty qualifications for potential faculty members to meet.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is impossible to determine the cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have less stringent qualifications to meet for potential faculty.

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

(a) Initially: It is impossible to determine the cost to the agency to implement this amendment. Any potential costs would be included in the ordinary operating budget of the agency.

(b) On a continuing basis: N/A

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable because the changes affect all entities in the same 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? Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.111, 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? It is impossible to determine.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? It is impossible to determine.

(c) How much will it cost the regulated entities for the first year? It is impossible to determine.

(d) How much will it cost the regulated entities for subsequent years? It is impossible to determine.

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)] It does not.

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:490. Licensed practical nurse infusion therapy scope of practice.

RELATES TO: KRS 314.011(10)(a), (c)

STATUTORY AUTHORITY: KRS 314.011(10)(c), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.011(10)(c) authorizes the board to promulgate an administrative regulation to establish the scope of practice for administering medicine or treatment by a licensed practical nurse. KRS 314.011(10)(a) requires that licensed practical nurses practice under the direction of a registered nurse, advanced practice registered nurse, physician assistant, licensed physician, or dentist. This administrative regulation establishes the scope of that practice as it relates to infusion therapy.

Section 1. Definitions. (1) "Administration" means to initiate and maintain infusion therapy.

(2) "Antineoplastic agent" means a medication that prevents the development, growth, or proliferation of malignant cells.

(3) "Central venous access device" means a catheter inserted into a peripheral or centrally located vein with the tip residing in the superior or inferior vena cava. This includes peripherally inserted central catheters.

(4) "Direction" means a communication of a plan of care that is based upon assessment of a patient by an advanced practice registered nurse, a registered nurse, physician assistant, licensed physician, or dentist that establishes the parameters for the provision of care or for the performance of a procedure.

(5) "Peripheral venous access device" means a peripherally-inserted intravenous catheter or needle that is less than or equal to three (3) inches in length.

(6) "Pharmacology" means information on the classification of intravenous drugs, indications for use, pharmacological properties, monitoring parameters, contraindications, dosing, clinical mathematics, anticipated side effects, potential complications, antidotal therapy, compatibilities, stabilities, specific considerations for select intravenous drugs, and administration of intravenous medications to pediatric, adult, and geriatric populations.

(7) "Procedural sedation" means the administration of intravenous medications to produce a decreased level of consciousness.

(8) "Supervision" means the provision of guidance by a registered nurse, advanced practice registered nurse, physician assistant, licensed physician, or dentist for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed in a safe manner.

(9) "Supervisor" means the registered nurse, advanced practice registered nurse, physician assistant, licensed physician, or dentist who provides supervision of the licensed practical nurse's practice as defined in this section.

(10) "Therapeutic phlebotomy" means removal of a specific volume of blood from a patient as ordered for the treatment of a specific condition or disease.

(11) "Unstable" means inconsistent, unpredictable, or consistently fluctuating.

Section 2. Education and Training Standards.

(1) Prior to performing infusion therapy, the licensed practical nurse (LPN) shall have completed education and training related to the scope of infusion therapy for an LPN. This education and training shall be obtained through:

(a) A prelicensure program of nursing for individuals admitted to the program after September 15, 2019; or

(b) An institution, practice setting, or continuing education provider that has in place a written instructional program and a competency validation mechanism that includes a process for evaluation and documentation of an LPN's demonstration of the knowledge, skills, and abilities related to the safe administration of infusion therapy. The LPN shall receive and maintain written documentation of completion of the instructional program and competency validation.

(2) The education and training programs recognized in subsection (1) of this section shall be based on the Policies and Procedures for Infusion Therapy and the Infusion Therapy: Standards of Practice and shall include the following components:

(a) Legal considerations and risk management issues;

(b) Related anatomy and physiology including fluid and electrolyte balance;

(c) Principles of pharmacology as related to infusion therapy;

(d) Infusion equipment and preparation;

(e) Principles and procedures for administration of solutions and medications via intravenous route including transfusion therapy and parenteral nutrition;

(f) Principles and procedures for site maintenance for a peripheral venous access device and a central venous access device;

(g) Assessment of and appropriate interventions for

complications related to infusion therapy; and

(h) Demonstration and validation of competency for infusion therapy procedures.

Section 3. Supervision Requirements.

(1) An LPN performing infusion therapy procedures shall be under the direction and supervision of a registered nurse (RN), advanced practice registered nurse (APRN), physician assistant, licensed physician, or dentist.

(2) For a patient whose condition is determined by the LPN's supervisor to be stable and predictable, and rapid change is not anticipated, the supervisor may provide supervision of the LPN's provision of infusion therapy without being physically present in the immediate vicinity of the LPN, but shall be readily available.

(3) In the following cases, for the LPN to provide infusion therapy, the LPN's supervisor shall be physically present in the immediate vicinity of the LPN and immediately available to intervene in the care of the patient:

(a) If a patient's condition is or becomes unstable;

(b) If a patient is receiving blood, blood components, or plasma volume expanders; or

(c) If a patient is receiving peritoneal dialysis or hemodialysis.

Section 4. Standards of Practice.

(1) An LPN shall perform only those infusion therapy acts for which the LPN possesses the knowledge, skill, and ability to perform in a safe manner, except as limited by Section 5 of this administrative regulation and under supervision as required by Section 3 of this administrative regulation.

(2) An LPN shall consult with an RN or physician, physician assistant, dentist, or advanced practice registered nurse and seek guidance as needed if:

(a) The patient's care needs exceed the licensed practical nursing scope of practice;

(b) The patient's care needs surpass the LPN's knowledge, skill, or ability; or

(c) The patient's condition becomes unstable.

(3) An LPN shall obtain instruction and supervision as necessary if implementing new or unfamiliar nursing practices or procedures.

(4) An LPN shall follow the written, established policies and procedures of the facility that are consistent with KRS Chapter 314.

Section 5. Functions That Shall Not Be Performed. An LPN shall not perform the following infusion therapy functions:

(1) Administration of tissue plasminogen activators, except when used to clot any central venous access device;

(2) Accessing of a central venous access device used for hemodynamic monitoring;

(3) Administration of medications or fluids via arterial lines or implanted arterial ports;

(4) Accessing or programming an implanted infusion pump;

(5) Administration of infusion therapy medications for the purpose of procedural sedation or anesthesia;

(6) Administration of fluids or medications via an epidural, intrathecal, intraosseous, or umbilical route, or via a ventricular reservoir;

(7) Administration of medications or fluids via an arteriovenous fistula or graft, except for dialysis;

(8) Repair of a central venous access device;

(9) Performance of therapeutic phlebotomy;

(10) Aspiration of an arterial line;

(11) Initiation and removal of a peripherally inserted central, midclavicular, or midline catheter; or

(12) Administration of immunoglobulins, antineoplastic agents, or investigational drugs.

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

(a) "Policies and Procedures for Infusion Therapy: Home Infusion", [Fifth] Second Edition, [2016] 2021; and

(b) "Infusion Therapy: Standards of Practice", Eighth Edition, 2021. [2016.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington

VOLUME 49, NUMBER 2– AUGUST 1, 2022

Parkway, Suite 300, Louisville, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. Links to this material is also available on the board's Web site at <https://kbn.ky.gov/>.

JESSICA WILSON, President

APPROVED BY AGENCY: June 16, 2022

FILED WITH LRC: June 22, 2022 at 9:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2022 at 10:00 AM at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 2022, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, cell (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for LPN infusion therapy.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

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

(a) How the amendment will change this existing administrative regulation: It updates material incorporated by reference to the current versions of the documents.

(b) The necessity of the amendment to this administrative regulation: The material has been updated.

(c) How the amendment conforms to the content of the authorizing statutes: By incorporating the current versions.

(d) How the amendment will assist in the effective administration of the statutes: By incorporating the current versions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed Practical Nurses, approximately 18,000.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will utilize the current versions of the materials to guide their practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will practice according to current standards.

(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 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: None is necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applicable since the amendment applies to all LPNs.

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? Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? No cost.

(d) How much will it cost the regulated entities for subsequent years? No cost.

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)] It does not.

BOARDS AND COMMISSIONS

**Board of Nursing
(Amendment)**

201 KAR 20:620. Licensing requirements for licensed certified professional midwives.

RELATES TO: KRS 194.540, 314.400 – 314.414, 620.020

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(2) requires the board to promulgate an administrative regulation to establish licensing requirements for licensed certified professional midwives. KRS 314.404(5) requires the board to promulgate an administrative regulation to establish fees. This administrative regulation establishes the fees and requirements for initial licensure, renewal, and reinstatement for licensed certified professional midwives.

Section 1. Fees.

(1) The fee for initial licensure shall be \$1,000.

(2) The fee for licensure renewal shall be \$1,000.

(3) The fee for licensure reinstatement shall be \$1,000.

(4) Unless otherwise specified in this section, fees enumerated in 201 KAR 20:240 shall apply.

Section 2. Initial Licensure. An applicant for initial licensure as a licensed certified professional midwife (LCPM) shall complete the Certified Professional Midwife Application for Licensure and pay the fee for initial licensure as established in Section 1 of this administrative regulation.

Section 3. Educational Requirements.

(1) An applicant for initial licensure as an LCPM shall provide evidence that the program from which they graduated is accredited by the Midwifery Education Accreditation Council (MEAC).

(2) An applicant shall also provide a copy of his or her official transcript.

(3)(a) If the applicant was certified by the North American Registry of Midwives (NARM) before January 1, 2020 through an educational pathway not accredited by MEAC, the applicant shall provide evidence of having earned the Midwifery Bridge Certificate issued by NARM. This shall be in lieu of an official transcript.

(b) If the applicant is licensed in another state that does not require an accredited education, the applicant shall provide evidence of having earned the Midwifery Bridge Certificate issued by NARM and proof of licensure in the other state.

(4) An applicant shall provide evidence of current American Heart Association Basic Life Support (BLS) for health care providers and Neonatal Resuscitation Program (NRP) certifications.

(5) An applicant shall complete a pediatric abusive head trauma course described in KRS 620.020(8) and a domestic violence course described in KRS 194A.540 and provide evidence to the board at the time of application.

Section 4. Competency Validation. An applicant shall provide evidence of having passed the North American Registry of Midwives (NARM) Examination and been granted certification by NARM.

Section 5. Criminal Record Check.

(1) Within six (6) months of the date of the application, an applicant shall request a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card and including any required fee to the KSP and the FBI.

(2) An applicant shall provide a certified or attested copy of the court record of any misdemeanor or felony conviction and a letter of explanation that addresses each conviction at the time of application.

Section 6. Action in Another Jurisdiction. An applicant shall

provide a certified copy of any disciplinary action taken on any professional or business license in another jurisdiction and a letter of explanation at the time of application.

Section 7. License.

(1) An applicant who meets the requirements of KRS 314.404 and Sections 1 through 6 of this administrative regulation shall be issued a license to practice as an LCPM.

(2) The license shall be issued for one (1) year from the date of initial licensure and may be renewed pursuant to Section 8 of this administrative regulation.

Section 8. Renewal.

(1) A license to practice as an LCPM may be renewed by completing the Certified Professional Midwife Licensure Renewal Application and paying the fee established in Section 1 of this administrative regulation.

(2) The LCPM shall provide evidence of current certification with NARM at the time of renewal.

(3) The LCPM shall provide evidence of current BLS and NRP certifications at the time of renewal.

(4) Upon approval of the Certified Professional Midwife Renewal Application, the license shall be renewed for one (1) year.

Section 9. Reinstatement.

(1) If the LCPM license has lapsed, an applicant may file the Certified Professional Midwife Application for Licensure to request reinstatement and pay the fee established in Section 1 of this administrative regulation.

(2) The LCPM shall provide evidence of current certification with NARM at the time of application for reinstatement.

(3) The LCPM shall provide evidence of current BLS and NRP certifications at the time of application for reinstatement.

(4) An applicant for reinstatement shall also meet the requirements of Sections 5 and 6 of this administrative regulation.

Section 10. For the purposes of the practice as an LCPM, an LCPM shall use the name under which he or she is licensed with the board of nursing.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Certified Professional Midwife Application for Licensure", 1/2020; and

(b) "Certified Professional Midwife Licensure Renewal Application", 1/2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

JESSICA WILSON, President

APPROVED BY AGENCY: June 16, 2022

FILED WITH LRC: June 22, 2022 at 9:50 a.m.

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CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, cell (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets licensing requirements for Licensed Certified Professional Midwives (LCPM) and miscellaneous requirements.

(b) The necessity of this administrative regulation: It is required by statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements.

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

(a) How the amendment will change this existing administrative regulation: It adds two minor provisions. One states that all other fees will be contained in the general fee regulation for the Board, 201 KAR 20:240. The other states what name an LCPM shall use for practice purposes.

(b) The necessity of the amendment to this administrative regulation: The changes were deemed necessary for clarification.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes: By adopting the changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: LCPMs, approximately 30.

(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 needed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: 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 funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

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? Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.410.

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

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

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

(c) How much will it cost to administer this program for the first year? There is no additional cost.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? No cost.

(d) How much will it cost the regulated entities for subsequent years? No cost.

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)] It does not.

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:650. Licensed certified professional midwives permitted medical tests and formulary.

RELATES TO: KRS 314.400[314.404] – 314.416[314.414]

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(7) authorizes[requires] the board to promulgate an administrative regulation to establish a list of medical tests that a licensed certified professional midwife may order when providing certified professional midwifery services that is limited to only those tests that are indicated and approved for the safe conduct of pregnancy, labor or birth, and care of a client and not intended for the diagnosis or management of any acute condition unrelated to pregnancy.

Section 1. An LCPM may independently order the following medical tests:

(1) Complete blood count (CBC);

(2) Blood type, Rh, and antibody screen;

(3) Screening for gestational diabetes;

(4) Hepatitis B and C panels for immunity or infection;

(5) HIV test;

(6) HPV test;

(7) Pap smear;

(8) Screen tests for syphilis, chlamydia, gonorrhea, and herpes;

- (9) Rubella titers;
- (10) Urine or serum HCG;
- (11) Urinalysis;
- (12) Urine culture including Group B strep;
- (13) Vaginal culture for Group B strep;
- (14) Varicella titers;
- (15) Ultrasound for fetal viability, confirmation of singleton intrauterine pregnancy, gestational age, fetal position, placental localization, anatomy scan, amniotic fluid index, or nuchal translucency;
- (16) Standard state newborn screening for metabolic disorders;
- (17) Newborn hearing screening;
- (18) Critical congenital heart disease screening (pulse oximetry);
- (19) Maternal prenatal genetic screening for errors of metabolism;
- (20) Hemoglobin A1C;
- (21) Standard screening tests for fetal genetic abnormalities including Quad Screen and cell-free DNA testing;
- (22) TSH screening; ~~and~~
- (23) Non-stress tests;
- (24) Neo-Bilirubin or Total-Bilirubin;
- (25) Coombs and blood type test of the newborn; and
- (26) The fetal screen and Rhogam tests of the client.

Section 2. An LCPM may order any other test which is ~~deemed~~~~[determined—as]~~ necessary after consultation with a physician or other appropriate licensed healthcare provider.

Section 3. (1) An LCPM may obtain, transport, and administer the following legend medications:

- (a) Vitamin K;
 - (b) Rho D immune globulin;
 - (c) Erythromycin ophthalmic ointment USP, five-tenths (0.5) percent;
 - (d) Oxygen;
 - (e) Hepatitis B vaccine;
 - (f) Antibiotics which shall be administered pursuant to United States Centers for Disease Control (CDC) Guidelines for Prophylaxis:
 - 1. Penicillin;
 - 2. Ampicillin;
 - 3. Cefazolin;
 - 4. Clindamycin; and
 - 5. Vancomycin;
 - (g) Topical anesthetics:
 - 1. Procaine HCl;
 - 2. Novacaine;
 - 3. Benzocaine;
 - 4. Cetacaine; and
 - 5. Generic equivalents;
 - (h) Lidocaine, ~~1%[one (1) percent]~~ up to twenty (20) milliliters per patient;
 - (i) Epinephrine;
 - (j) Glucose gel to be administered orally for neonatal hypoglycemia;
 - (k) Tranexamic acid;
 - (l) Oxytocin;
 - (m) Lactated ringer's;
 - (n) Normal saline; and
 - (o) ~~[(h)]~~ Medical supplies needed to administer the medications listed in this administrative regulation.
- (2)(a) An LCPM shall obtain and transport for emergencies Oxytocin ~~[(Pitocin)]~~ for prevention of postpartum hemorrhage and Lactated Ringer's or Normal Saline for intravenous infusion.
- (b) The LCPM shall obtain and transport at least one (1) of the following to be used in the event of postpartum hemorrhage and if Oxytocin is not successful:
- 1. Methylergonovine (Methergine);
 - 2. Hemabate; or
 - 3. Misoprostal (Cytotec).

JESSICA WILSON, President

APPROVED BY AGENCY: June 16, 2022

FILED WITH LRC: June 22, 2022 at 9:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2022 at 10:00 AM at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 2022, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, cell (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets the formulary and tests permitted to a Licensed Certified Professional Midwife (LCPM).

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By creating the formulary and tests permitted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By creating the formulary and tests permitted.

(2) If 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 adds several tests to the list and several new medications to the formulary.

(b) The necessity of the amendment to this administrative regulation: It was recommended by the LCPM Advisory Council and approved by the Board that these changes should be made.

(c) How the amendment conforms to the content of the authorizing statutes: The Board has the authority to set the formulary and tests permitted.

(d) How the amendment will assist in the effective administration of the statutes: By allowing these new tests and medications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: LCPMs, approximately 30.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to use the new tests and medications.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

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? Board of Nursing

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.410

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

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

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

(c) How much will it cost to administer this program for the first year? There is no additional cost.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? No cost.

(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? There is no cost.

(d) How much will it cost the regulated entities for subsequent years? There is no cost.

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)] It does not.

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

202 KAR 7:701. Scope of practice matters.

RELATES TO: KRS 39A.050, 311A.135, 311A.140, 311A.160, 311A.165, 311A.170, 311A.175

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

311A.030, 311A.135, 311A.140, 311A.160, 311A.165, 311A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This administrative regulation establishes the scope of practice.

Section 1. Emergency Medical Responder. (1) In addition to the skills and procedures established in the current National Highway Traffic Safety Administration National EMS Scope of Practice Model, emergency medical responders certified by the board shall be eligible to perform the supplemental procedures:

(a) Cervical spine and spinal immobilization; and

(b) Administration of Naloxone via Nasal Atomization Devices.

(2) To be eligible to perform a supplemental procedure established in subsection (1) of this section, an emergency medical responder shall have been trained and educated utilizing:

(a) Kentucky Required Mandatory Supplemental Curriculum: EMR Spinal Immobilization (KBEMS-E-34); and

(b) Kentucky Required Mandatory Supplemental Curriculum for the EMR in the Administration of Naloxone using a Nasal Atomization Device (KBEMS-E-33).

(3) An out-of-state emergency medical responder may perform any skill or procedure that the emergency medical responder may use in the state in which the emergency medical responder is certified subject to the emergency medical responder being called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

(4)(a) An emergency medical responder shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

1. The emergency medical responder's medical director or designated on-line medical direction orders otherwise;

2. Compliance with approved protocols is not in the patient's medical best interest; or

3. The emergency medical responder does not have the equipment or medication to adhere to the protocol.

(b) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

Section 2. Emergency Medical Technician (EMT). (1) In addition to the skills and procedures established in the current National Highway Traffic Safety Administration National EMS Scope of Practice Model, an EMT certified by the board shall be eligible to perform the supplemental procedures:

(a) Identification of correct placement of an endotracheal tube (ETT) placed by a licensed paramedic, including the use of end tidal CO₂ monitoring (EtCO₂);

(b) Securing of an endotracheal tube that has been inserted by appropriately licensed personnel;

(c) The use of Blind Insertion Airway Devices (BIADs);

(d) Utilizing a cardiac monitor and troubleshooting potential problems;

(e) Selecting and applying cardiac electrodes;

(f) Non-interpretive acquisition and transmission of a 12-Lead Electrocardiogram (ECG);

(g) Appropriate utilization of equipment and sampling of blood glucose using a glucometer;

(h) Care for a saline lock site where a catheter has been dislodged;

(i) Administration of Epinephrine for anaphylaxis;

(j) Administration of Naloxone using a Nasal Atomization Device; and

(k) Administration of Albuterol using a Nebulizer.

(2) To be eligible to perform each of the supplemental procedures, an EMT shall have been trained and educated utilizing:

(a) Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Monitoring & Securing

an ETT (KBEMS-E-38);

(b) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of Electrocardiogram Electrodes, Use of a Cardiac Monitor, and Acquisition and Transmission of a 12-Lead ECG (KBEMS-E-35);

(c) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT): Training in the Monitoring, Maintaining, and Discontinuing of Pre-established Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-Home Encounters (KBEMS-E-40);

(d) Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of End-tidal Carbon Dioxide Monitoring (KBEMS-E-39);

(e) Kentucky Required Mandatory Supplemental Curriculum for the EMT in the Administration of Naloxone Using a Nasal Atomization Device (KBEMS-E-36);

(f) Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Blindly Inserted Airway Devices (BIADs) (KBEMS-E-37);

(g) Kentucky Required Mandatory Supplemental Curriculum for the EMT: Sampling of Blood Glucose Using a Glucometer (KBEMS-E-41);

(h) Kentucky Required Mandatory Supplemental Curriculum: Administration of Epinephrine (KBEMS-E-42); and

(i) Kentucky Required Mandatory Supplemental Curriculum: Administration of Albuterol using a Nebulizer (KBEMS-E-43).

(3) An EMT shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

(a) The medical director or designated on-line medical direction orders otherwise;

(b) Compliance is not in the medical best interest of the patient; or

(c) The EMT does not have the equipment or medication to adhere to the protocol.

(4) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

(5) An out-of-state EMT may perform any skill or procedure that the EMT may use in the state in which the EMT is certified subject to the EMT being called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

Section 3. EMT Students. (1) During the didactic, laboratory, and clinical portions of an EMT course, an EMT student may perform any skill or procedure, or administer any medication within the scope of practice for an EMT as established by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure, or to administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the EMT course.

(2) During a field internship, an EMT student may perform any skill or procedure, or administer any medication within the scope of practice for an EMT as established by this administrative regulation, if:

(a) The student has written authorization by the medical director of the EMT course to perform the skill or procedure;

(b) Authorization to perform the skill or procedure is filed with the coordinator of the EMT course; and

(c) The medical director of the EMT course and the director of the agency for whom the skill or procedure is performed each give written permission to the EMT student to participate in a field internship with the agency.

(3) This administrative regulation shall not be construed to allow an emergency medical responder student or EMT student ~~or AEMT student, or paramedic student~~ to perform any skill or procedure without direct supervision by a physician, registered nurse, ~~or paramedic, AEMT, or EMT~~, any of whom shall be licensed or

certified in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 4. Advanced Emergency Medical Technician (AEMT).

(1) An AEMT shall provide emergency medical services consistent with the current National Highway Traffic Safety Administration National EMS Scope of Practice Model.

(2) In addition to the skills and procedures in the National EMS Scope of Practice Model, the scope of practice of a Kentucky AEMT shall include the supplemental procedures:

(a) Quantitative and qualitative capnography and capnometry;

(b) Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure (BiPAP/CPAP) devices; and

(c) Establishing and maintaining an adult intraosseous infusion.

(3) To be eligible to perform each of the supplemental procedures, an AEMT shall have been trained and educated utilizing:

(a) Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using a Noninvasive Monitoring Device - Application and Interpretation of Quantitative Capnography and End Tidal Carbon Dioxide Monitoring (KBEMS-E30);

(b) Kentucky Required Mandatory Supplemental Curriculum for the AEMT - Intraosseous Infusion in the Adult (KBEMS-E-31); and

(c) Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure Devices (KBEMS-E-32).

(4)(a) An AEMT shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

1. The AEMT's medical director or designated on-line medical direction orders otherwise;

2. Compliance with approved protocols is not in the patient's medical best interest; or

3. The AEMT does not have the equipment or medication to adhere to the protocol.

(b) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

(5) If providing emergency medical services during a disaster or emergency that qualifies as part of the Emergency Management Assistance Compact pursuant to KRS 39A.050, or if acting pursuant to another agreement made pursuant to KRS Chapter 39, an AEMT certified in another state may perform the skills and procedures approved by the certifying state.

Section 5. AEMT Students. (1) During the didactic, laboratory, and clinical portions of an AEMT course, an AEMT student may perform any skill or procedure, or administer any medication within the scope of practice for an AEMT, as defined by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure, or to administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the AEMT course.

(2) During a field internship, an AEMT student may perform any skill or procedure, or administer any medication within the scope of practice for an AEMT, as established by this administrative regulation, if:

(a) The student has written authorization by the medical director of the AEMT course to perform the skill or procedure;

(b) Authorization to perform the skill or procedure is filed with the coordinator of the AEMT course; and

(c) The medical director of the AEMT course and the director of the agency for whom the skill or procedure is performed each give written permission to the AEMT student to participate in a field internship with the agency.

(3) This administrative regulation shall not be construed to allow an ~~emergency medical responder student, EMT student, AEMT student, or paramedic student~~ to perform any skill or procedure without direct supervision by a physician, registered nurse, ~~or paramedic, or AEMT~~, any of whom shall be licensed or certified in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 6. Paramedic. (1) A paramedic may perform any of the skills and procedures consistent with the current National Highway Traffic Safety Administration National EMS Scope of Practice Model.

(2) A paramedic shall adhere to the protocols established by KRS Chapter 311A and 202 KAR Chapter 7. Deviation from these protocols shall only occur if:

(a) The medical director or designated on-line medical direction orders otherwise;

(b) Compliance is not in the medical best interest of the patient; or

(c) The paramedic does not have the equipment or medication to adhere to the protocol.

(3) Any deviation from an approved protocol shall be documented in the Patient Care Report (PCR) established in 202 KAR 7:540.

(4)(a) A paramedic functioning in a position of employment may perform any procedure or administer medications authorized by KRS 311A.170 or this administrative regulation, at any location within the Commonwealth subject to the written approval of, and limitations established by the paramedic's medical director and the paramedic's employer.

(b) A paramedic performing skills or procedures outside of the normal response area for the paramedic shall accompany and assist with or continue treatment for the patient until the patient is accepted by a receiving hospital, an ALS ground or licensed ALS air ambulance provider, or care is transferred to another licensed paramedic, receiving facility RN, advanced practice registered nurse (APRN), licensed physician's assistant, or physician.

(5)(a)1. An off-duty paramedic may perform any procedure or administer medications authorized by KRS 311A.170 or this administrative regulation, at any location within the Commonwealth subject to the written approval of, and limitations established by the paramedic's medical director and, if appropriate, the paramedic's employer; or

2. The paramedic may render care subject to the limitations of the paramedic's scope of practice at any location, if ordered to do so by a duly licensed physician.

(b) A paramedic performing skills or procedures outside of the normal response area for the paramedic shall accompany and assist with or continue treatment for the patient until the patient is accepted by a receiving hospital, an ALS ground or licensed ALS air ambulance provider, or care is transferred to another licensed paramedic, hospital emergency department, RN, advanced practice registered nurse (APRN), licensed physician's assistant, or physician.

(6) An out-of-state paramedic may perform any skill, procedure, or administer any medications that the paramedic may use in the state in which the paramedic is certified or licensed, subject to the control of the out-of-state paramedic's medical director or protocols and only in the following circumstances:

(a) An out-of-state paramedic is transporting a patient from out-of-state to a Kentucky medical facility or other location in Kentucky;

(b) An out-of-state paramedic is transporting a patient from out of state through Kentucky to another location out of state; or

(c) An out-of-state paramedic is called upon to assist in providing medical and related care during a disaster or emergency pursuant to KRS 39A.050, the Emergency Management Assistance Compact, or an agreement made pursuant to KRS Chapter 39A.

(7) A paramedic with a critical care endorsement shall be authorized to perform the skills and procedures included in the paramedic's education and training subject to authorization by the medical director through established protocols in accordance with KRS Chapter 311A and 202 KAR Chapter 7.

Section 7. Paramedic Hospital Scope of Practice. (1) Paramedics functioning in the hospital environment shall perform within the scope of practice, as established in this administrative regulation.

(2) Employment of paramedics in hospital emergency department settings, exclusive of employment by air or ground transport components, or both, owned or operated by the hospital, shall be subject to demonstrating knowledge based and clinical

competencies at a level satisfactory to the employing hospital and subject to KRS Chapter 311A and 202 KAR Chapter 7.

(3) An employer shall not require practice for a paramedic that exceeds the defined scope of practice established by KRS Chapter 311A and 202 KAR Chapter 7. The paramedic shall inform the employing institution or supervising staff of any inability or limitation to perform an ordered skill or procedure based upon:

(a) A lack of knowledge of or training or education in the procedure or skill; or

(b) The order or directive exceeding the paramedic's scope of practice.

(4) An employer may provide education or educational opportunities to expand the documented clinical practice of the paramedic but shall not do so with the intent of requiring the paramedic to perform skills or procedures exceeding the scope of practice established by KRS Chapter 311A and 202 KAR Chapter 7 while in the hospital's employ.

(5) A paramedic shall:

(a) Maintain strict patient confidentiality;

(b) Provide and assure continuity of care to patients;

(c) Be a patient advocate;

(d) Follow the hospital's chain of command;

(e) Be knowledgeable and function within the scope of practice of a paramedic;

(f) Be clearly identified as a licensed paramedic while functioning in the hospital's employ;

(g) Document on patient care records all interventions, treatments, and assessments performed by the paramedic;

(h) Perform patient assessment, which may include triage; and

(i) Institute appropriate therapy in the care of patients subject to the limitation of existing protocols.

Section 8. Paramedic Students. (1) During the didactic, laboratory, and clinical portions of a paramedic course, a paramedic student may perform any skill or procedure, or administer any medication within the scope of practice for a paramedic as established by this administrative regulation, if the student:

(a) Has been trained and educated to perform the skill or procedure or administer the medication; and

(b) Is permitted to perform the skill or procedure in writing or by direct order of the medical director of the paramedic course.

(2) During the field internship, a paramedic student may perform any skill or procedure, or administer any medication within the scope of practice for a paramedic as established by this administrative regulation, if:

(a) The student has written authorization by the medical director of the paramedic course to perform the skill or procedure;

(b) The permission is filed with the paramedic course coordinator of the paramedic course; and

(c) The medical director and director of the ambulance service each give written permission to the paramedic student to participate in a field internship with the ambulance service.

(3) This administrative regulation shall not be construed to allow ~~a~~~~[an emergency medical responder student, EMT student, AEMT student, or]~~ paramedic student to perform any skill or procedure without direct supervision by a physician, registered nurse, or paramedic, any of whom shall be licensed or certified in the Commonwealth of Kentucky, except for out-of-state clinical or field rotations specifically approved by the board.

Section 9. Restriction of Practice. This administrative regulation shall not prohibit a medical director from restricting the scope of practice of any emergency medical responder, EMT, AEMT, or paramedic under the medical director's authority through established protocols.

Section 10. Exemptions. This administrative regulation shall not prohibit an emergency medical responder, emergency medical technician, advanced emergency medical technician, or paramedic certified or licensed in another state or registered with the NREMT from functioning in accordance with the scope of practice established in KRS Chapter 311A and 202 KAR Chapter 7 while assisting with mass casualties, weapons of mass destruction, or

disaster incidents.

Section 11. Incorporation by Reference. (1) The following documents are incorporated by reference.

(a) “Kentucky Required Mandatory Supplemental Curriculum for the AEMT Using a Noninvasive Monitoring Device - Application and Interpretation of Quantitative Capnography and End Tidal Carbon Dioxide Monitoring”, KBEMS-E-30, February 2007;

(b) “Kentucky Required Mandatory Supplemental Curriculum for the AEMT Intraosseous Infusion in the Adult”, KBEMS-E-31, February 2007;

(c) “Kentucky Required Mandatory Supplemental Curriculum for the AEMT using Bi-level Positive Airway Pressure and Continuous Positive Airway Pressure Devices”, KBEMS-E-32, February 2007;

(d) “Kentucky Required Mandatory Supplemental Curriculum for the EMR in the Administration of Naloxone Using a Nasal Atomization Device” KBEMS-E-33, February 2007;

(e) “Kentucky Required Mandatory Supplemental Curriculum: EMR Spinal Immobilization”, KBEMS-E-34, February 2007;

(f) “Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of Electrocardiogram Electrodes, Use of a Cardiac Monitor, and Acquisition and Transmission of a 12-Lead ECG”, KBEMS-E-35, February 2007;

(g) “Kentucky Required Mandatory Supplemental Curriculum for the EMT in the Administration of Naloxone Using a Nasal Atomization Device”, KBEMS-E-36, February 2007;

(h) “Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Blindly Inserted Airway Devices (BIADs)”, KBEMS-E-37, February 2007;

(i) “Kentucky Required Mandatory Supplemental Curriculum for the EMT in Advanced Airway Management: Monitoring & Securing an ETT”, KBEMS-E-38, February 2007;

(j) “Kentucky Required Mandatory Supplemental Curriculum for the Emergency Medical Technician (EMT) Using a Noninvasive Monitoring Device - Application of End-Tidal Carbon Dioxide Monitoring”, KBEMS-E-39, February 2007;

(k) “Kentucky Required Mandatory Supplemental Curriculum for Emergency Medical Technician (EMT): Training in the Monitoring, Maintaining, and Discontinuing of Pre-established Patient Intravenous Infusions in Prehospital, Interfacility, and Facility-to-Home Encounters”, KBEMS-E-40, February 2007;

(l) “Kentucky Required Mandatory Supplemental Curriculum for the EMT: Sampling of Blood Glucose Using a Glucometer”, KBEMS-E-41, February 2007;

(m) “Kentucky Required Mandatory Supplemental Curriculum: Administration of Epinephrine”, KBEMS-E-42, February 2007;

(n) “Kentucky Required Mandatory Supplemental Curriculum: Administration of Albuterol Using a Nebulizer”, KBEMS-E-43, February 2007; and

(o) “National Highway Traffic Safety Administration National EMS Scope of Practice Model”, February 2007.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 2464 Fortune Drive, Suite 195, Lexington, Kentucky 40509[148 James Court, Suite 50, Lexington, Kentucky 40565], Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chair

APPROVED BY AGENCY: June 30, 2022

FILED WITH LRC: July 12, 2022 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, 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 September 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 7:701 establishes the scope of practice for individuals certified or licensed by the Board.

(b) The necessity of this administrative regulation: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the Board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This administrative regulation establishes the scope of practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 by establishing the scope of practice for individuals licensed or certified by the Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the Board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This administrative regulation assists in the effective administration of the statutes by establishing the scope of practice.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow students seeking certification as an EMT to be supervised by a certified AEMT or EMT when performing a skill or procedure, in addition to a physician, registered nurse, or paramedic who are currently the only personnel authorized to supervise EMT students. Additionally, this amendment will allow students seeking certification as an AEMT to be supervised by a certified AEMT when performing a skill or procedure, in addition to a physician, registered nurse, or paramedic who are currently the only personnel authorized to supervise AEMT students. Finally, while this amendment does amend the substantive requirements for paramedic student supervision, changes are made to Section 8(3) to clarify that the provision applies only to paramedics and that, in general, supervising personnel must be licensed or certified in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to mitigate staffing concerns. Specifically, due in part to staffing issues, there are not enough available paramedics to supervise students seeking EMT and AEMT certification from the Board. This has resulted in delays in students' ability to become certified, which has further aggravated staffing concerns.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 require the Board to promulgate administrative regulations relating to the scope of practice for individuals certified or licensed by the board. This amendment conforms to the content of these statutes by establishing the scope of practice.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of KRS 311A.025, 311A.030, 311A.135, 311A.140, 311A.160, 311A.165, and 311A.170 by establishing the scope of practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky EMS agencies and students seeking EMT or AEMT certification.

(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 on the part of EMS agencies. Students seeking EMT certification will be permitted to perform skills and procedures under the supervision of a licensed or certified physician, registered nurse, paramedic, AEMT, or EMT. Students seeking AEMT certification will be permitted to perform skills and procedures under the supervision of a physician, registered nurse, paramedic, or AEMT.

(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 personnel.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All EMS agencies will benefit from students being able to be supervised by additional certified or licensed personnel, which will likely result in more available certified EMS personnel in a shorter amount of time than the current regulation would allow. All students seeking certification as an EMT or AEMT will benefit from being able to be supervised by additional personnel, which will likely result in students becoming certified in a shorter amount of time than the current regulation would allow.

(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 personnel.

(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 personnel.

(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 scope of practice requirements for all affected personnel.

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 EMS agencies and students seeking EMT or AEMT certification.

(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(+/-):The administrative regulation will impact all Kentucky EMS agencies and students seeking EMT or AEMT certification.

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.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel

limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

Section 1. Definitions.

(1) "Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are fishing license exempt as established in KRS 150.170.

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

(3) "Asian carp" means bighead carp, silver carp, black carp, and grass carp.

(4) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.

(5) "Catfish" means a blue catfish, channel catfish, or flathead catfish.

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

(7) "Cull" means to release a previously caught fish that an angler has kept as a part of a daily creel limit and replace it with another fish of the same species.

(8) "Pneumatic arrow launching device" means a device designed to fire an arrow through the use of a compressed air cartridge.

(9) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(10) "Temporary aquatic area" means an area temporarily inundated from, but still connected to, a stream, river, or reservoir and that persists only for the duration of the elevated water levels.

(11) "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

(12) "Trophy catfish" means a:

(a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or

(b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

Section 2. General Provisions.

(1) A person using nontraditional fishing methods shall observe the daily creel limits and size limits established in paragraphs (a) through (d) of this subsection:

(a) The daily creel limit for catfish using any non-traditional fishing method shall not include more than one (1) trophy catfish of each species, except as established in Section 7 (3) of this administrative regulation;[-]

(b) Paddlefish daily creel limit, two (2); no size limit;

(c) Shovelnose sturgeon daily creel limit, two (2); no size limit; and

(d) Asian carp daily creel limit is unlimited; no size limit.

(2) The possession limit for paddlefish and trophy catfish shall be two (2) times the daily creel limit for each species.

(3) Shovelnose sturgeon may not be harvested from the Mississippi River and must be immediately released.

(4) A person shall release any:

(a) Lake sturgeon;[-or]

(b) Pallid sturgeon; or

(c) Alligator gar.

Section 3. Skin Diving, Scuba Diving, and Underwater Spear Fishing.

(1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department's Division of Law Enforcement; or

(b) The local conservation officer who is assigned to the

particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated cove as established in subsection (4) of this section shall display an international diving flag as established in 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand-[-]held spear or mechanically [-]propelled spear shall be legal throughout the year in lakes 1,000 surface acres in size or larger, as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.

(a) An angler who is spearing fish shall:

1. Be completely submerged in the water where spearing takes place; and

2. Only spear rough fish.

(b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 4. Sport Fishing Trotlines, Jugging, and Setlines.

(1) Each sport fishing trotline, jug line, or setline shall be permanently labeled or tagged with the customer identification number found on the current sport fishing license of the person using it.

(2) Each trotline, jug line, or setline shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(3) A trotline, setline, or jug line shall be confiscated if it is not:

(a) Properly labeled or tagged; or

(b) Checked or baited at least once every twenty-four (24) hours.

(4) An angler shall not use more than:

(a) Two (2) sport fishing trotlines;

(b) Twenty-five (25) setlines; or

(c) Fifty (50) jug lines.

(5) Multiple anglers in one (1) boat shall not use more than fifty (50) jug lines per boat.

(6) An angler using a sport fishing trotline shall:

(a) Set the trotline at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the trotline.

(7) A person shall not use a jug line or setline with more than one (1) single or multi-barbed hook.

(8) A sport fishing trotline, jug line, or setline shall not be used in the waters established in paragraphs (a) through (d) of this subsection:

(a) In the Tennessee River within 700 yards of Kentucky Lake Dam;

(b) In the Cumberland River below Lake Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area lakes, Ballard County;

2. Peal Wildlife Management Area lakes, Ballard County; and

3. Swan Lake Wildlife Management Area lakes, Ballard County;

or

(d) In the areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:

1. Smithland Dam downstream to a line perpendicular to the end

of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K & I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(9) An angler using a trotline, jug line, or setline shall follow all sport fish daily creel limits and size limits as established in 301 KAR 1:201.

Section 5. Temporary Aquatic Areas and Temporary Pools.

(1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where anglers may take rough fish by any method except:

- (a) Poison;
- (b) Electrical devices;
- (c) Firearms; or
- (d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person with a valid commercial fishing license may use nets and seines if the nets and seines are appropriately tagged, as established in 301 KAR 1:146.

(4) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 6. Gigging and Snagging.

(1) Gigging and snagging season shall be February 1 through May 10, except as established in subsections (7) and (9) of this section.

(2) A person shall not:

(a) Gig or snag a sport fish, as established in 301 KAR 1:060, except as established in subsections (7) and (9) of this section;

(b) Gig or snag from a platform;

(c) Gig from a boat in any lake less than 500 surface acres;

(d) Gig at night from a boat; or

(e) Snag from a boat.

(3) A snagging rod shall be equipped with:

- (a) Line;
- (b) Guides;
- (c) A reel; and

(d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used while snagging in:

- 1. The Green River and its tributaries; or
- 2. The Rolling Fork River and its tributaries.

(4) A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established in subsections (7) and (9) of this section.

(5) A person shall not gig or snag in the areas or bodies of water established in paragraphs (a) through (g) of this subsection:

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) The Cumberland River below the Lake Barkley Dam to the U.S. 62 bridge;

(d) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

(e) ~~(d)~~ The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and

Grayson Counties;

~~(f)(e)~~ Cave Run Lake; or

~~(g)(f)~~ Within 200 yards of any dam on a river or stream, except as established in subsection (7) of this section.

(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:

(a) For twenty-four (24) hours a day from January 1 through May 31; and

(b) From sunset to sunrise from June 1 through December 31.

(8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.

(9) A person may snag sport fish or rough fish year-round in the section of the Tennessee River from the Interstate 24 bridge to the Ohio River.

(10) A person shall not snag on the Tennessee River:

(a) Under the U.S. 62 bridge;

(b) Under the P & L Railroad bridge; or

(c) From any fishing pier or jetty ~~the fishing piers located below the U.S. 62 bridge~~.

(11) There shall not be a daily creel limit for rough fish except[:

~~(a) The daily creel limit for rough fish in the Cumberland River below Barkley Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp;~~

~~(b) the daily aggregate creel limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8), except there shall not be a creel limit on Asian Carp.];~~ and

~~(c) 1. The statewide daily creel limit for snagging paddlefish shall be two (2), in all areas outside those established in paragraphs (a) and (b) of this subsection; and~~

~~2. In an area established in paragraph (a) or (b) of this subsection, up to eight (8) paddlefish may be taken.]~~

(12) There shall not be a size limit for sport fish snagged in the Tennessee River below Kentucky Lake Dam.

(13) A person shall immediately retain, and not release or cull, any gigged or snagged paddlefish.

(14) ~~(13)~~ All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(15) ~~(14)~~ All gigged or snagged rough fish in the Cumberland River below Lake Barkley ~~[Lake]~~ Dam shall be immediately retained, and not released or culled, except for Asian carp, shad, or herring.

(16) ~~(15)~~ A person shall immediately cease snagging if:

(a) A daily creel limit of paddlefish is reached;

(b) A daily creel limit of shovelnose sturgeon is reached;

~~(c) A daily creel limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the creel limit for that sport fish is less than eight (8); or~~

~~(d)(e)~~ A trophy catfish is snagged.

Section 7. Grabbing.

(1) The grabbing season for rough fish shall be June 1 to August 31 during daylight hours.

(2) Grabbing shall be permitted in all waters.

(3) The daily creel limit for grabbing shall be fifteen (15) fish, no more than five (5) of which may be catfish, except anglers grabbing at Barren River Lake, Carr Creek Lake, Dewey Lake, Fishtrap Lake, or Taylorsville Lake, may only harvest one (1) blue or channel catfish over twenty-five (25) inches.

Section 8. Bow Fishing.

(1) An angler using archery equipment, a crossbow, or a pneumatic arrow launching device shall not take:

(a) Sport fish;

(b) Alligator gar;

(c) More than five (5) catfish daily; or

(d) ~~More than two (2) paddlefish daily;~~ or

(e) Lake sturgeon.

(2) Any paddlefish, shovelnose sturgeon, or catfish shot with archery equipment, a crossbow, or a pneumatic arrow launching device shall:

- (a) Be immediately retained, and not released or culled; and
- (b) Count toward a person's daily limit.
- (3) Bow fishing shall be open statewide, except:
 - (a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;
 - (b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;
 - (c) In the following lakes:
 - 1. Carpenter Lake (Davies County);
 - 2. Clear Creek Lake (Bath County);
 - 3. Greenbo Lake (Greenup County);
 - 4. Lake Carnico (Nicholas County); and
 - 5. Lake Reba (Madison County); or
 - (d) From a boat in restricted areas below navigation, power generating, or flood control dams.

RICH STORM, Commissioner

APPROVED BY AGENCY: July 14, 2022

FILED WITH LRC: July 14, 2022 at 11:52 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 29, 2022, at 9:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Jenny Gilbert, Legislative Affairs, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky and to provide for reasonable recreational fishing opportunities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make those requirements apply to a limited area. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and creel limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for bag or creel limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by authorizing the methods used to take fish, the areas open for such take, and the seasons and limits to be used when taking fish by nontraditional methods.

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

(a) How the amendment will change this existing administrative regulation: This amendment makes the following changes to all

nontraditional fishing methods: applies the statewide two-fish paddlefish creel limit to all nontraditional fishing methods, sets a daily harvest limit of two shovelnose sturgeon, prohibits harvest of shovelnose sturgeon from the Mississippi River, prohibits harvest of pallid sturgeon statewide, and removes daily harvest limits for Asian carp. In addition, the following changes apply to gigging and snagging: anglers statewide must stop gigging or snagging for the day once they reach their shovelnose sturgeon daily limit, snagging from any fishing pier or jetty on the Tennessee River from the Kentucky Lake Dam down to the Ohio River is prohibited, gigging and snagging in the Cumberland River below Lake Barkley Dam to the Highway 62 bridge is prohibited, and the daily harvest limit of 8 rough fish and the requirement to keep them on the Cumberland River below Lake Barkley Dam is removed. In addition to the above listed changes, this amendment also adds shovelnose sturgeon to the list of fish that must be taken into possession and not released if shot while bowfishing and adds Carr Creek Lake to the list of lakes where anglers can only keep one blue catfish of channel catfish over 25 inches per day when hand grabbing. There is also one cleanup item addressing the size limit of snagged sportfish from the Tennessee River below Kentucky Lake dam.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide better statewide regulations for nontraditional fishing methods to better protect the shovelnose sturgeon and paddlefish populations in the state, as well as prevent accidental harvest of pallid sturgeon in the Mississippi River. In addition, unnecessary restrictions on Asian carp daily limits were removed. This amendment also simplifies and updates gigging and snagging regulations on the Cumberland and Tennessee rivers below Kentucky and Barkley lakes as well as cleans up confusion on the size limit of sport fish that are required to be kept when snagged on the Tennessee River below Kentucky Lake dam. Finally, this administrative regulation addresses bow fishing impacts on the shovelnose sturgeon and applies an already established catfish handgrabbing regulation to a lake that has just started receiving blue catfish stockings.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all anglers using nontraditional fishing methods statewide and in particular on the Tennessee and Cumberland rivers below Kentucky and Barkley lakes.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers using nontraditional fishing methods will need to follow the new requirements listed in 2(a) above.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with these amendments, anglers should see sustained fishing opportunities for shovelnose sturgeon, paddlefish, and catfish (in Carr Creek Lake), as well as decreased numbers of Asian carp through increased take. In addition, these amendments should clear up some confusion in the wording from previous versions of this regulation.

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

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

(b) On a continuing basis: There will be no cost on a continuing basis.

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

implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees were established for this program either directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all anglers using nontraditional fishing methods must abide by the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The department's Fisheries and Law Enforcement Divisions will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.440, 150.470, and 235.280.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 will be no cost 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? There will be no cost savings for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year? There will be no additional costs for the regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? There will be no additional 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)] There will be no major economic impact from this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. N/A

(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

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Law Enforcement Council (Amendment)

503 KAR 1:140. Peace officer, telecommunicator, and court security officer professional standards.

RELATES TO: KRS Chapter 13B, 15.330(1)(f), 15.330(1)(h), 15.380, 15.382, 15.384(1), 15.392, 15.394(1), 15.396(1), 15.3971, 15.400(1), 15.440, 15.540, 15.565, 15.580

STATUTORY AUTHORITY: KRS 15.330(1)(f), 15.330(1)(h), 15.382, 15.440, 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) and 15.590 authorize the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and to approve law enforcement officers, telecommunicators, and other persons having met requirements under KRS 15.310 to 15.510, 15.530 to 15.590, and 15.990 to 15.592. KRS 15.440 authorizes the council to promulgate administrative regulations for approval of basic training credit for out-of-state basic training and work experience. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer, telecommunicator, and court security officer certification.

Section 1. Approval of Agency's Validated Job Task Analysis and Associated Agency Testing.

(1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to the KLEC office completed KLEC Forms J and Q along with a copy of the proposed job task analysis. The agency shall supply:

(a) The name of the entity that completed the analysis;

(b) The date on which the analysis was completed;

(c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and

(d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.

(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

(a) Credentials and history of the entity conducting the analysis.

1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.

2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.

3. Number and quality of job task analyses completed.

(b) Methodological approach.

1. Reasonable, standardized format of the study and the report.

2. Relative reliability and validity of the study's sampling techniques and practice.

3. Other considerations that reflect sound practice of the scientific method.

4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.

(3) Initial review.

(a) Within five (5) business days of receipt of the application, the KLEC office shall notify the agency that:

1. The application has been received and is complete; or
2. The application is incomplete. The notice that an application is incomplete shall identify the specific information to be supplemented to process the application. The agency shall submit the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for consideration of its job task analysis and associated agency testing.

(b) The KLEC office recommendation. Within thirty (30) days of receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests and the specific reasons supporting a recommendation to reject.

(c) KLEC review. The KLEC Professional Standards Committee shall review the application and recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.

(d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:

1. The reasons for the finding; and
2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

Section 2. Agency Testing Procedures.

(1) Each agency participating in certification shall submit a completed KLEC Form Q or KLEC Form tele-Q to the KLEC office prior to any applicant testing. The KLEC office shall be notified of any changes in the Form Q or KLEC Form tele-Q within ten (10) days.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC Form Q, the KLEC office shall notify the agency that the form:

- (a) Has been received and is complete; or
- (b) Is incomplete. The notice that an application is incomplete shall identify the specific information to be supplemented to process the form. The agency shall submit the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. Applicants shall not be tested or certified by KLEC until the form is complete.

(3) The KLEC office review of requests for agency testing. Within thirty (30) days of receipt of the completed form, the KLEC office shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. The KLEC office shall notify the agency if the proposed testing is acceptable. If the KLEC office determines that the minimum standards are not met, it shall forward the form to KLEC along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC Professional Standards Committee shall review the form and the recommendation of the KLEC office and forward its recommendation to KLEC for final review. Within sixty (60) days of receipt of the form, KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected and the specific reasons supporting the rejection.

(5)(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:

1. With the Secretary of the Justice and Public Safety Cabinet; and

2. Within thirty (30) days of receipt of the notice of rejection.

(b) The notice of appeal shall be submitted:

1. In writing; and
2. With a copy of the notice of rejection of agency testing attached.

(c) A copy of the notice of appeal shall also be mailed to the KLEC office by certified mail.

(d) The Secretary of the Justice and Public Safety Cabinet shall

schedule a hearing within thirty (30) days of receipt of the notice of appeal.

(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 3. Certification of peace officers, telecommunicators, and court security officers.

(1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC Form E to the KLEC office.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC Form E to the KLEC office.

(3) An agency may request that peace officers identified in KRS 15.380(4), who have completed law enforcement basic training, and part-time telecommunicators, who have completed the Telecommunications Academy, participate in certification by submitting KLEC Form E to the KLEC office.

(4) Peace officers, telecommunicators, and court security officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1), 15.3971, 15.560, or 15.565 shall submit KLEC Form C.

Section 4. Suitability Minimum Requirements: The minimum requirements and procedures established for KLEC testing by this section shall be followed.

(1) The background investigation as specified in KRS 15.382(12) and 15.3971(1)(k) shall consist of the following minimum requirements, using the KLEC Form H-1 Background Investigation and personal history questionnaire.

- (a) Biographical history;
- (b) Family history;
- (c) Education;
- (d) Employment history;
- (e) Interview with the applicant's references;
- (f) Criminal history including domestic violence protective orders; and
- (g) Credit history.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5), 15.3971(1)(e), and 15.540(1)(c) through the procedure established by this subsection.

(a) The applicant shall be fingerprinted by the Kentucky State Police, who shall input the fingerprints into the AFIS System and complete a state records check. The fingerprints shall also be sent to the FBI for a records check.

(b) The KSP shall forward the results of state and FBI records check to the employing agency.

(c) Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI.

(d) The agency may employ the peace officer, telecommunicator, or court security officer contingent upon the pending FBI results.

(3) Psychological screening, as specified in KRS 15.382(15), 15.3971(1)(m), and 15.540(1)(d), shall consist of the minimum requirements established by this subsection.

(a) Screening shall measure a broad spectrum of abilities which are relevant to job related duties, including:

1. Cognitive abilities;
2. Personality characteristics; and
3. Related constructs, including:
 - a. Integrity; and
 - b. Conscientiousness.

(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.

(c)1. Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's

overall suitability for employment as a peace officer, telecommunicator, or court security officer;

2. The summary statement shall classify applicants as:

- a. Essentially suitable;
- b. May be unsuitable; or
- c. Borderline suitability; and

3. If an applicant is classified as borderline suitability or may be unsuitable, the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency.

(d) Screening shall be administered in accordance with the Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014.

(4) Physical ability testing as specified in KRS 15.382(16) shall consist of the minimum requirements established by this subsection.

(a) Precertification status.

1. To obtain precertification status under KRS 15.386(1), the applicant shall successfully complete each of the events in the following order as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the KLEC Physical Fitness Testing Protocols:

- a. Bench press;
- b. Sit-ups;
- c. 300 meter run;
- d. Push-ups; and
- e. One and five-tenths (1.5) mile run.

2. An applicant shall pass the physical ability test for precertification status if he or she achieves a cumulative score of fifty (50) points or more, based upon the following scoring of the physical training events listed in subparagraph 1 of this paragraph:

a. Bench press, based upon a percentage of the recruit's body weight:

- (i) 9 points - Recruit shall bench press at least fifty-five and three-tenths (55.3) percent of body weight;
- (ii) 9.5 points - Recruit shall bench press at least fifty-nine and seven-tenths (59.7) percent of body weight;
- (iii) 10 points - Recruit shall bench press at least sixty-four (64) percent of body weight;
- (iv) 10.5 points - Recruit shall bench press at least sixty-eight and five-tenths (68.5) percent of body weight; and
- (v) 11 points - Recruit shall bench press at least seventy-three (73) percent or more of body weight;

b. Sit-ups:

- (i) 9 points - Recruit shall complete at least thirteen (13) repetitions in one (1) minute;
- (ii) 9.5 points - Recruit shall complete at least sixteen (16) repetitions in one (1) minute;
- (iii) 10 points - Recruit shall complete at least eighteen (18) repetitions in one (1) minute; and
- (iv) 11 points - Recruit shall complete nineteen (19) repetitions or more in one (1) minute;

c. 300 meter run:

- (i) 9 points - Recruit shall complete in sixty-eight (68) seconds or less;
- (ii) 9.5 points - Recruit shall complete in sixty-seven (67) seconds or less;
- (iii) 10 points - Recruit shall complete in sixty-five (65) seconds; and

(iv) 11 points - Recruit shall complete in less than sixty-five (65) seconds;

d. Push-ups:

- (i) 9 points - Recruit shall complete at least fourteen (14) repetitions in two (2) minutes;
- (ii) 9.5 points - Recruit shall complete at least seventeen (17) repetitions in two (2) minutes;
- (iii) 10 points - Recruit shall complete at least twenty (20) repetitions in two (2) minutes;
- (iv) 10.5 points - Recruit shall complete at least twenty-three (23) repetitions in two (2) minutes; and
- (v) 11 points - Recruit shall complete twenty-five (25) repetitions

or more in two (2) minutes; and

e. One and five-tenths (1.5) mile run:

- (i) 9 points - Recruit shall complete in 1,076 seconds (17:56) or less;
- (ii) 9.5 points - Recruit shall complete in 1,054 seconds (17:34) or less;
- (iii) 10 points - Recruit shall complete in 1,032 seconds (17:12) or less;
- (iv) 10.5 points - Recruit shall complete in at least 1,004 seconds (16:44) or less; and
- (v) 11 points - Recruit shall complete in 975 seconds (16:15) or less.

3. An applicant shall not be awarded more than eleven (11) points in any one (1) of the five (5) physical ability events.

4. An applicant shall fail the physical ability test for precertification status if he or she does not achieve:

- a. A cumulative score of at least fifty (50) points for all five (5) events; and
- b. At least nine (9) points on each physical training event.

5. At the sole discretion of the hiring agency, an applicant who fails to meet the lowest performance level in a test event, thus earning a zero point value for that event, shall be granted a retest opportunity in that event without having to retest in the other events for which a point value was obtained, subject to the conditions established by this subparagraph.

a. A retest shall not be granted unless the maximum value of eleven (11) points would allow the applicant to meet the required cumulative fifty (50) point minimum.

b. A retest shall not occur any sooner than forty-eight (48) hours or any later than sixty (60) days from the date of the initial test attempt.

6. If an applicant obtains a point value for each event, but does not obtain a cumulative score of at least fifty (50) points, the applicant may attempt the test battery again, in its entirety. This shall be considered a second test administration and not a retest.

7. An applicant may participate in the physical ability test for precertification status in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

8. An applicant may participate in one (1) physical ability retest for each physical ability test taken for precertification status.

(b) Certification status.

1. To obtain certification status under KRS 15.386(2), the applicant shall successfully complete each of the following physical ability requirements within ten (10) days of graduation from law enforcement basic training, which shall be administered in the same order and in conformity with the KLEC Physical Fitness Testing Protocols:

- a. Bench press. One (1) repetition of maximum (RM) bench press equal to seventy-three (73) percent of the applicant's body weight;
- b. Sit-ups. Nineteen (19) sit-ups in one (1) minute;
- c. 300 meter run in less than sixty-five (65) seconds;
- d. Push-ups. Twenty-five (25) push-ups; and
- e. One and five-tenths (1.5) mile run in sixteen (16) minutes, fifteen (15) seconds.

2. If an applicant passes all events when participating in the physical ability test in its entirety, the applicant shall have met the physical ability minimum requirements for certification status.

3. Retest. If an applicant fails to pass all events when participating in the physical ability test for certification status during the training graduation test:

- a. The applicant shall not retest in the failed events earlier than forty-eight (48) hours after the date the test is originally administered;
- b. All failed events shall be retested on the same date; and
- c. If the applicant passes all previously failed events on the date of the retest, the applicant shall have met the physical ability test requirements for certification status.

(5) Medical screening as specified in KRS 15.382(10) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall complete KLEC Form G-2, Medical History Statement, which, along with KLEC Form G-3, Medical Screening Guidelines Implementation Manual, shall be provided to

the physician, nurse practitioner, or physician's assistant, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines.

(b) The agency shall provide the examining physician, nurse practitioner, or physician's assistant with a copy of the KLEC Form T-1a, Physician's Medical Release Form.

(c) The physician, nurse practitioner, or physician's assistant shall complete KLEC Form G-1, Medical Examination Report, and forward it to the employing agency.

(6) Drug screening as specified in KRS 15.382(11), 15.3971(1)(j), and 15.540(1)(f) shall consist of the minimum requirements established by this subsection.

(a) The applicant shall execute KLEC Form K-1 and submit a urine sample that shall be screened and if necessary confirmed using the guidelines as outlined in the Mandatory Guidelines for Federal Workplace Drug Testing Programs, 82 Fed. Reg. 7920-1 (Jan. 23, 2017). The screening and confirmatory cutoff concentrations are as follows:

SCREENING	
Marijuana metabolites	50 ng/mL
Cocaine metabolite (Benzoyllecgonine)	150 ng/mL
Codeine / Morphine	2,000 ng/mL
Hydrocodone / Hydromorphone	300 ng/mL
Oxycodone / Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine / Methamphetamine	500 ng/mL
MDMA / MDA	500 ng/mL
CONFIRMATION	
THC/THCA	15 ng/mL
Benzoyllecgonine	100 ng/mL
Codeine	2,000 ng/mL
Morphine	2,000 ng/mL
Hydrocodone	100 ng/mL
Hydromorphone	100 ng/mL
Oxycodone	100 ng/mL
Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine (PCP)	25 ng/mL
Amphetamine	250 ng/mL
Methamphetamine	250 ng/mL
MDMA	250 ng/mL
MDA	250 ng/mL

(b) The integrity of the urine sample shall be documented on KLEC Form K-2, Drug Screening through Urinalysis Chain of Custody.

(7) For the polygraph examination as specified in KRS 15.382(17), 15.3971(1)(n), and 15.540(1)(e), the applicant shall complete KLEC Form I-1, Consent for Pre-employment Polygraph Examination, and KLEC Form I-2, Pre-employment Polygraph Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant.

(8) The agency shall ensure that the applicant receives and has read KLEC Form L-1, Code of Ethics and KLEC Form L-2, Canon of Ethics.

(9) High school diploma.

(a) The high school graduate requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b) shall be met by:

1. Submission of a copy of a diploma or transcript from a public high school; or

2. Submission of a diploma or transcript from a private high school that:

a. Is certified by or recognized by the Kentucky Department of Education; or

b. Has complied with all provisions of Kentucky law relating to private or other non-public secondary schools as applicable, including days and hours of attendance and course curriculum. The applicant shall also submit a completed Applicant Education Verification form.

(b) A document purporting to be a high school or college diploma

and obtained through the internet or by mail order shall not satisfy the requirement of KRS 15.382(3), 15.3971(1)(c), or 15.540(1)(b).

Section 5. KLEC Administered Testing Procedures.

(1) An applicant shall execute all releases required for KLEC testing, including:

(a) KLEC Form I-1 - Consent for Pre-employment Polygraph Examination;

(b) KLEC Form K-1 - Drug Screening through Urinalysis Applicant Consent Form;

(c) KLEC Form T-1 - Medical Release - Phase I Testing; and

(d) KLEC Form T-2 - Liability Waiver - Phase I Testing.

(2) Testing schedule.

(a) The KLEC office shall publish online or otherwise make available to all law enforcement and telecommunications agencies in the commonwealth a list of sites and dates for KLEC administered testing.

(b) Testing sites shall be statewide and accommodations shall be made where reasonable to ensure testing sites are accessible based upon need.

(c) Advance notice of the schedule shall be made public prior to the testing.

(d) The KLEC office shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Department of Criminal Justice Training as needed.

(3) Registration for KLEC administered testing. The KLEC office shall receive KLEC Form A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification when the testing is administered.

(b) The KLEC office shall receive the completed polygraph questionnaire KLEC Form I-2 when the testing is administered.

Section 6. Test Reporting by KLEC.

(1) Results of tests provided by or through the KLEC office shall be forwarded to the employing agency head.

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC Form D. The information from the completed form shall be provided to DOCJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(3) Length of test result validity.

(a) Physical ability for precertification status results shall be considered current and valid one (1) year from the passing date of the test.

(b) Suitability screening results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new suitability screening for the applicant.

(c) Polygraph examination results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, for example, a divorce or the death of a close family member or friend, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant who leaves and reenters the testing process for preselection screening shall submit to another drug screening.

(4) Updating test results. The employing agency shall update test results if necessary by submitting KLEC Form D to the KLEC office.

(5) Agency access to prior test results.

(a) It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing, which is still current and valid.

(b) If agencies enter into an agreement with the written permission of the applicant, the new employing agency shall receive

the medical, suitability, and polygraph results directly from the agency that initially requested testing of the applicant.

(c) Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

Section 7. Test Reporting by Agency.

(1) An agency that performs physical ability testing based upon the requirements in Section 4 of this administrative regulation shall report all test results by submitting a POPS Form PT-1, Physical Agility Test Session Report, to the KLEC within ten (10) days of administering the test.

(2) An agency that performs physical ability testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC office within ten (10) days of administering the test.

(3) Physical ability test results shall be reported to the KLEC office regardless of whether the applicant:

- (a) Passes or fails the test; or
- (b) Performs or completes every component of the physical ability test.

Section 8. KLEC Administered Testing Costs.

(1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

- (a) Sixty-five (65) dollars for each psychological screening;
- (b) \$100 for each polygraph examination; and
- (c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to the KLEC office:

1. The actual approved budget of the governmental unit for the current and the preceding year;
2. The number of certification applicants for the current and preceding year;
3. The actual revenue receipts of the governmental unit for the current and the preceding year; and
4. A detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that adequate funding was not budgeted to cover the cost of testing.

(b) Initial review. Within five (5) business days of receipt of the application, the KLEC office shall mail a notification to the agency that:

1. The application has been received and is complete; or
2. The application is incomplete and shall identify the specific information to be supplemented to process the application. The KLEC office shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

(c) Recommendation. Within thirty (30) days of their receipt of the completed application, the KLEC office shall forward the application to KLEC along with a recommendation to approve or reject the application for financial hardship and the specific reasons supporting a recommendation to reject.

(d) KLEC review.

1. The KLEC Committee on Professional Standards shall review the application and the recommendation of the KLEC office and forward their recommendation to KLEC for final review.

2. Within sixty (60) days of their receipt of the application, KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected and shall provide the specific reasons supporting the rejection.

(e) Appeal.

1. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet.

2. The notice shall be filed within thirty (30) days of receipt of the notice of rejection.

3. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of financial hardship attached.

4. A copy of the notice of appeal shall be delivered to the KLEC office by certified mail.

5. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) the KLEC office shall immediately notify DOJT.

Section 9. Employment Changes.

(1) Pursuant to KRS 15.392 and 15.580 if a certified peace officer, telecommunicator, or court security officer leaves an agency, the agency shall submit KLEC Form F.

(2) If the peace officer, telecommunicator, or court security officer is reemployed by another agency the employing agency shall submit KLEC Form F within five (5) business days of the employment or appointment. Additionally, the agency shall submit KLEC Form D-1 for returning peace officers or court security officers.

(3) Information from completed KLEC Forms F shall be provided to DOJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

Section 10. Out-of-state, Military, and Federal Law Enforcement and Telecommunications Basic Training.

(1) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was equal to or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers when the course was completed by the applicant, as determined by the executive director of the Office of Kentucky Law Enforcement Support;

(b) The basic training course or academy is a single, stand-alone course;

(c) The peace officer, telecommunicator, or court security officer has been employed in a full-time capacity in the state of graduation for a period of at least one (1) year before applying with the Kentucky agency; and

(d) The peace officer completes the following courses presented by the Department of Criminal Justice Training within one (1) year of his or her hiring by the Kentucky law enforcement agency. For purposes of meeting the hourly requirement in paragraph (a) of this subsection, the number of hours of these courses shall be added to the number of hours taken in the out-of-state basic training course:

1. The twenty-four (24) hour legal update Penal Code course;
2. The sixteen (16) hour legal update constitutional procedure course;

3. On-line Federal Emergency Management Agency ICS 100, ICS 200, and IS 700 courses (or current equivalent). A Certificate of Completion or official transcript shall satisfy this requirement; and

4. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:

- a. Basic officer skills;
- b. Orientation for new police chiefs; or
- c. Mandatory duties of the sheriff.

(2) An applicant to a Kentucky law enforcement agency who has graduated from a basic training course or academy in another state may be certified by the KLEC if:

(a) The basic training course or academy was at least 300 hours, but less than the number of hours required for Kentucky peace officers;

(b) The peace officer has been employed in a full-time capacity as a peace officer for three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic

training course or academy;

(c) The basic training course or academy is a single, stand-alone course; and

(d) The peace officer completes the courses as required in subsection (1)(d) of this section with the number of hours of these courses added to the number of hours taken in the out-of-state basic training course in subsection (2)(a) of this section.

(3) An applicant to a Kentucky law enforcement or telecommunications agency who has graduated from a law enforcement or telecommunications basic training course or academy while serving in the United States military may be certified by the KLEC if:

(a)

1. The basic training course or academy corresponded with or exceeded the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, as determined by the Executive Director of the Office of Kentucky Law Enforcement Support; or

2. The basic training course or academy did not correspond with or exceed the course content and number of hours required for Kentucky peace officers, telecommunicators, or court security officers at the time the course was completed by the applicant, a basic training credit of fifty (50) hours for each year of his or her full-time peace officer service together with the basic training course hours shall be granted to allow compliance with the total hours required by KRS 15.440, 503 KAR 1:110, or another administrative regulation modifying the hours; and

(b) The basic training course or academy was a single, stand-alone course.

(4) An applicant to a Kentucky law enforcement agency who has graduated from one (1) of the following Federal law enforcement basic training courses may be certified by the KLEC:

(a) Federal Bureau of Investigation;

(b) Bureau of Alcohol, Tobacco, and Firearms;

(c) Drug Enforcement Administration; or

(d) United States Secret Service.

(5) The KLEC shall not approve a basic training course or academy that consists of two (2) or more courses added together to meet the minimum number of basic training hours for a Kentucky peace officer, telecommunicator, or court security officer.

(6) An agency may request certification for a peace officer who has completed an out-of-state law enforcement basic training by submitting for the applicant:

(a) A certificate of completion or other official documentation showing completion of basic training;

(b) A transcript of classes for basic training with individual class hours specified; and

(c) A letter from an employing agency signed by the chief or a direct supervisor of the applicant certifying, or other official documentation showing, that the applicant was employed in a full-time capacity as a peace officer for:

1. At least one (1) year; or

2. Three (3) or more years with at least one (1) year in the state in which he or she completed his or her basic training course or academy.

(7) An applicant to a Kentucky law enforcement or telecommunications agency seeking certification under this section shall not be certified unless he or she has worked in a full-time capacity as a peace officer within five (5) years of applying for certification in Kentucky.

Section 11. Records.

(1) Records retention. The KLEC office shall retain all certification records in electronic or original medium consistent with the records retention schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030.

(2) Security. The KLEC office and employing agencies shall maintain records in a manner to ensure their security. To properly maintain the confidentiality of certification records as required by KRS 15.400(3) and 15.540(2), a law enforcement or telecommunications agency shall keep all records relating to certification in a file separate from any personnel file maintained by

the hiring authority.

(3) For KLEC audit purposes, an agency that has a separate human resources or personnel department may complete and maintain in the agency file a KLEC FORM POPS P, Certification of Peace Officer Professional Standards Testing Procedures, KLEC Form Q-3 – Drug Screening Approval, KLEC Form Q-4 – Polygraph Approval, and KLEC Form Q-5 – Suitability Screener Approval, indicating that the following testing procedures have been completed:

(a) Polygraph;

(b) Suitability screening;

(c) Drug screen; and

(d) Medical examination or history statement.

(4) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, telecommunicator, or court security officer regardless of where the certified peace officer, telecommunicator, or court security officer is employed in the commonwealth.

(5) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) and 15.540(2) may be denied participation in KLEC polygraph examinations and psychological examinations.

Section 12. Applicant Conduct and Behavior.

(1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and, subject to an administrative hearing in accordance with KRS Chapter 13B, may be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume, or be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) An applicant shall advise the KLEC test administrator in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician.

(c) An applicant shall not participate in physical ability testing if:

1. The applicant has taken:

a. A controlled substance as prescribed by a physician; or

b. Any other medication, whether prescribed or not; and

2. The applicant is under the influence of the controlled substance or medication to the extent that the applicant may be impaired or is a danger to self or others.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of testing, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) The KLEC shall notify the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing. The notice shall state the supporting reasons and circumstances of the removal and whether the agency may reschedule testing.

Section 13. Compliance.

(1) Inspection. Test results, testing procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, to audit specific applicants and agencies to ensure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible

violation to KLEC.

(5) Denial of participation in Kentucky Law Enforcement Foundation Program Fund (KLEFPF). If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 14. Issuance of Certification. All identification cards issued to a peace officer, telecommunicator, or court security officer verifying certification remain the property of KLEC and shall be returned to the KLEC office upon loss of certification.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Standards for Educational and Psychological Testing", American Educational Research Association, American Psychological Association, National Council on Measurement in Education, Joint Committee on Standards for Educational and Psychological Testing, 2014;

(b) "KLEC Form A - Testing Registration - Attesting to Minimum Standards", 2021;

(c) "KLEC Form C - Grandfather Information", 2021;

(d) "KLEC Form D - All Standards Met", 2022[2024];

(e) "KLEC Form D-1 – All Standards Met – Inactive to Active Status", 2022[2024];

(f) "KLEC Form E - Request for Certification for Exempt Officers", March 1, 1999;

(g) "KLEC Form F - Status Update", 2021;

(h) "KLEC Form G-1 - Medical Examination Report", 2021;

(i) "KLEC Form G-2 - Medical History Statement", 2021;

(j) "KLEC Form G-3 - Medical Screening Guidelines Implementation Manual", 2021;

(k) "KLEC Form H-1 - Background Investigation", 2021;

(l) "KLEC Form I-1 - Consent for Pre-employment Polygraph Examination", 2021;

(m) "KLEC Form I-2 - Pre-employment Polygraph Questionnaire", 2021;

(n) "KLEC Form J - JTA Submission", January 19, 1999;

(o) "KLEC Form K-1 - Drug Screening Through Urinalysis Applicant Consent Form", 2021;

(p) "KLEC Form K-2 - Drug Screening Through Urinalysis Chain of Custody Form", 2021;

(q) "KLEC Form L-1 - Code of Ethics", 2021;

(r) "KLEC Form L-2 - Canon of Ethics", 2021;

(s) "KLEC Form Q - Agency Submission Form", 2021;

(t) "KLEC Form Q-3 - Drug Screening Approval", 2021;

(u) "KLEC Form Q-4 - Polygraph Approval", 2021;

(v) "KLEC Form Q-5 – Suitability Screener Approval", 2021;

(w) "KLEC Form tele-Q - Agency Submission Form", 2021;

(x) "KLEC Form T-1 - Medical Release - Phase I Testing", 2021;

(y) "KLEC Form T-1a - Physician's Medical Release Form", 2021;

(z) "KLEC Form T-2 - Liability Waiver - Phase I Testing", 2021;

(aa) "POPS Form PT-1 - Physical Agility Test Session Report", 2021;

(bb) "POPS Form P - Certification of Peace Officer Professional Standards Testing Procedures", July 2004;

(cc) "KLEC Physical Fitness Testing Protocols", 2021; and

(dd) "KLEC Education Form - Applicant Education Verification", 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Law Enforcement Council, 4449 Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the council's website at <https://klecs.ky.gov/>.

JOHN MOBERLY, Executive Director

APPROVED BY AGENCY: July 7, 2022

FILED WITH LRC: July 13, 2022 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in

being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes approval requirements to show compliance with professional standards to meet certification requirements for law enforcement officers and telecommunicators employed by law enforcement agencies, and court security officers.

(b) The necessity of this administrative regulation: KRS 15.330 requires the Kentucky Law Enforcement Council (KLEC) to set minimum standards for training for certification and approving law enforcement officers and telecommunicators who have met the requirements for certification. This regulation establishes the minimum standards and approval process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330 authorizes the council to promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. KRS 15.330(1)(h) and KRS 15.590 authorize the council to promulgate administrative regulations to accomplish the purposes of KRS 15.310 to 15.404 and concerning training, in-service training, and telecommunications practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation gives staff and applicants for certification guidance on the requirements to be approved by the council.

(2) If 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 revises two forms incorporated by reference to comply with changes to the minimum qualifications for certification for law enforcement officers in KRS 15.382 involving additional crimes that prevent certification.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary due to changes in KRS 15.382(6).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.330 authorizes the KLEC to approve law enforcement officers, telecommunicators, and court security officers as having met requirements under KRS 15.310 to 15.510 and 15.530 to 15.590. KRS 15.330(1)(h) authorizes the KLEC to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.404. KRS 15.440 allows the council to promulgate administrative regulations for approval of basic training credit for out of state basic training and work experience. The amendment addresses the statutory changes in KRS 15.382(6) that change the minimum standards for certification for law enforcement officers. The council has authority over the forms used in the certification process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the process for individuals becoming certified peace officers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KLEC, the approximately 400 law enforcement agencies in the Commonwealth, the approximate 10,000 law enforcement, telecommunications, and court security

personnel who are required to be certified in the Commonwealth, and any individuals seeking certification as law enforcement, telecommunications, or court security personnel.

(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 revised forms will need to be used for peace officer certification applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are anticipated from the form changes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applications will comply with the statutory minimum requirements for peace officer certification.

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

(a) Initially: No additional costs are anticipated.

(b) On a continuing basis: No additional costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This amendment is not anticipated to increase implementation or enforcement costs for the council or for any regulated entity. Generally, the council is funded through appropriations from the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The existing regulation established fees for testing. The amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied because the administrative regulation applies equally to all those individuals or 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? The Kentucky Law Enforcement Council and various law enforcement and telecommunications agencies whose employees must be certified.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.330, 15.380, 15.440, 15.590.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the 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 does not provide revenue to any government entity, aside from the nominal testing fees already charged under the existing administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment does not provide revenue to any government entity, aside from the nominal testing fees already charged under the existing administrative regulation.

(c) How much will it cost to administer this program for the first year? The amendment is not anticipated to increase costs.

(d) How much will it cost to administer this program for subsequent years? The amendment is not anticipated to increase costs.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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? No cost savings are anticipated from the form changes to comply with the statute revisions.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings are anticipated from the form changes to comply with the statute revisions.

(c) How much will it cost the regulated entities for the first year? No additional costs are anticipated from the form changes to comply with the statute revisions.

(d) How much will it cost the regulated entities for subsequent years? No additional costs are anticipated from the form changes to comply with the statute revisions.

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 form changes are made to comply with statute revisions and no major economic impact is anticipated.

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:089. Workers' compensation medical fee schedule for physicians.

RELATES TO: KRS 342.0011(32), 342.019, 342.020, 342.035

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges, and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. KRS 342.035(4) requires the commissioner to promulgate an administrative regulation establishing the workers' compensation medical fee schedule for physicians. Pursuant to KRS 342.035, a schedule of fees is to be reviewed and updated, if appropriate, every two (2) years on July 1. This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions.

(1) "Medical fee schedule" means the 2022 Kentucky Workers' Compensation Schedule of Fees for Physicians[2020–Kentucky Workers' Compensation Schedule of Fees for Physicians].

(2) "Physician" is defined by KRS 342.0011(32).

Section 2. Services Covered.

(1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342.

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is

applicable unless:

(a) Another fee schedule of the Department of Workers' Claims applies;

(b) A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110; or

(c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

Section 3. Fee Computation.

(1) The appropriate fee for a procedure or item covered by the medical fee schedule shall be the Maximum Allowable Reimbursement (MAR) listed in the 2022[2020] Kentucky Workers' Compensation Schedule of Fees for Physicians for those procedures or items for which a specific monetary amount is listed.

(2) Procedures Listed Without Specified Maximum Allowable Reimbursement Monetary Amount: The appropriate fee for a procedure or item for which no specific monetary amount is listed shall be determined and calculated in accordance with numerical paragraph six (6) of the General Instructions of the medical fee schedule unless more specific Ground Rules are applicable to that service or item, in which case the fee shall be calculated in accordance with the applicable Ground Rules.

(3) The resulting fee shall be the maximum fee allowed for the service provided.

Section 4. (1) A physician or healthcare or medical services provider located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it treats a patient who is covered under KRS Chapter 342.

(2) Pursuant to KRS 342.035, medical fees due to an out-of-state physician or healthcare or medical services provider shall be calculated under the fee schedule in the same manner as for an in-state physician.

Section 5. Incorporation by Reference.

(1) "2022 Kentucky Workers' Compensation Schedule of Fees for Physicians", July 1, 2022 Edition[2020 Kentucky Workers' Compensation Schedule of Fees for Physicians, July 1, 2020 Edition], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify the Commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.

SCOTT C. WILHOIT, Commissioner

APPROVED BY AGENCY:

FILED WITH LRC:

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 28, at 10:00 a.m. (EDT) at the Department of Workers' Claims, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0682, email

dale.hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the medical fee schedule for physicians and the requirements for using the fee schedule.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the commissioner is required to promulgate an administrative regulation regarding fee schedules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates the extensive fee schedule for physicians and requirements for the fee schedule.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have fee schedules to control the medical costs of the workers' compensation system. Injured employees should receive quality medical care and physicians should be appropriately paid.

(2) If 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 medical fee schedule has been updated and will be incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: KRS 342.035 requires the schedule of fees to be reviewed and updated every two (2) years, if appropriate.

(c) How the amendment conforms to the content of the authorizing statutes: The schedule of fees has been appropriately updated to ensure that medical fees are fair, current, and reasonable for similar treatment in the same community for general health insurance payments.

(d) How the amendment will assist in the effective administration of the statutes: The schedule of fees assists the workers' compensation program by updating fees for physicians to ensure injured workers get qualified and appropriate medical treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, injured employees, insurance carriers, self-insurance groups, and self-insured employers and employers, third party administrators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Insurance carriers, self-insured groups, self-insured employers, third party administrators, and medical providers must purchase the new schedule of fees to accurately bill and pay for medical services. Other parties to workers' compensation claims are only indirectly impacted by the new fee schedule.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Insurance carriers, self-insured groups, self-insured employers or third party administrators and medical providers can purchase the fee schedule book with disk for \$120 or the disk for \$60.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medical providers will receive fair, current, and reasonable fees for services provided to injured workers. Injured workers will be treated by qualified medical providers.

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

(a) Initially: The contract for reviewing and updating the physicians fee schedule is \$66,935.00. The cost to print is \$1,749.

(b) On a continuing basis: No continuing costs.

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

implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding 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 sets forth a current schedule of fees to be paid to physicians. Fees have been updated to be fair, current, and reasonable for similar treatment in the same community as paid by health insurers.

(9) TIERING: Is tiering applied? Tiering is not applied, because the updated fee schedule applies to all parties 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? The Department of Workers' Claims and all parts of government with employees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. As an employer, there may be some increased costs for medical services. It is impossible to estimate not knowing what medical services will be needed by injured workers.

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

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

(c) How much will it cost to administer this program for the first year? There are no new administrative costs.

(d) How much will it cost to administer this program for subsequent years? There are no new administrative costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on state or local government because the fee schedule governs the cost of medical services between medical treatment providers and payment obligors.

(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? Medical payment obligors can be assured reimbursement payments are fair, current, and reasonable for services provided to injured workers. Injured workers will be treated by qualified medical providers. Without knowing what the cost for medical treatment would have been without the fee schedule it is impossible to estimate the savings.

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

(c) How much will it cost the regulated entities for the first year? Insurance carriers, self-insured groups, self-insured employers or third party administrators and medical providers can purchase the fee schedule book with disk for \$120 or the disk for \$60.

(d) How much will it cost the regulated entities for subsequent years? Nothing the second year. The fee schedule is updated every two (2) years; it is unknown what the cost will be 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 (+/-): Unknown.

Expenditures (+/-): \$120 or \$60 in the first year.

Other Explanation: Insurance carriers, self-insured groups, self-insured employers, third party administrators, and medical providers must purchase the new schedule of fees to accurately bill and pay for medical services. Other parties to workers' compensation claims are only indirectly impacted by the new fee schedule.

(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 amendment to this administrative regulation will not have a major economic impact.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Epidemiology and Health Planning (Amendment)

901 KAR 5:120. Abortion reporting.

RELATES TO: KRS 213.101, 213.106, 311.595, 311.720, 311.774, 311.781, 311.782, 311.783

STATUTORY AUTHORITY: KRS 194A.050(1), 213.021, 213.101(1), (7), 2022 Ky. Acts ch. 210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 213.101(1) requires each abortion that occurs in the commonwealth to be reported to the Office of Vital Statistics. KRS 213.101(7) requires the Office of Vital Statistics to promulgate administrative regulations to assist in compliance with that statute. 2022 Ky. Act ch. 210 expanded the abortion reporting requirements to include the full name and address of the physician and facility, the age of the father, if known, the Rh negative status of the patient, if the patient was treated for a sexually transmitted disease, the reason for the abortion, any follow-up treatment provided, and additional prescription information. This administrative regulation establishes the reporting criteria for abortions.

Section 1. Definitions. (1) "Abortion" is defined by KRS 311.720(1).

(2) "Probable post-fertilization age" is defined by KRS 311.781(6).

(3) "Reasonable medical judgment" is defined by KRS 311.781(7).

(4) "Serious risk of the substantial and irreversible impairment of a major bodily function" is defined by KRS 311.781(8).

Section 2. Reporting. (1) A person or institution shall comply with the reporting requirements of KRS 213.101(1) and (2).

(2) The report shall be filed irrelevant of the gestational age or probable post-fertilization age of the fetus at the time of the abortion.

(3) The report shall be made within three (3) days after the end of the month in which the abortion was performed through the cabinet's electronic database or on VS-913, Report of Abortion.

(4) The report shall:

(a) Contain the information required to be certified in writing including the following:

1. The probable post-fertilization age of the unborn child;

2. Whether the abortion was necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and

irreversible impairment of a major bodily function of the pregnant woman;

3. The available methods or techniques considered and the reasons for choosing the method or technique employed;

4. Whether the physician determined in his or her reasonable medical judgment that termination of the pregnancy in the manner selected provides the best opportunity for the unborn child to survive;

5. If the physician did not choose the method of abortion that provides the best chance of survival for the unborn child, whether the pregnancy termination in that manner would have posed a greater risk of death of the pregnant woman or a greater risk of substantial and irreversible impairment of a major bodily function of the pregnant woman than other available methods of abortion; and

6. Any complications known to the provider as a result of the abortion, as set forth in KRS 311.774(3); and

(b) Not contain information that identifies the [physician,]woman[,] or man involved.

(5) Pursuant to KRS 213.106, a report shall be used in accordance with the provisions of KRS 213.101.

Section 3. Prescription Reporting. (1) In accordance with KRS 213.101(2), each prescription for a drug or combination of drugs for which the primary indication is the induction of abortion shall be reported by the physician prescribing the medication and the pharmacy dispensing the medication within three (3)[fifteen (15)] days after the end of the month in which the prescription was issued.

(2) The report shall be made through the cabinet's electronic database or on VS-913P, Abortion Prescription Reporting Form.

(3) The report shall:

(a) Contain the drug or combination of drugs prescribed;[and]

(b) The information required by 2022 Ky. Acts ch. 210; and

(c) Not contain information that identifies the [physician,]woman[,] or man involved.

Section 4. Penalties. Failure to comply with the provisions of KRS 213.101(1) shall subject the reporting person or institution to the penalties provided in KRS 213.101(5) and (6).

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

(a) Form VS-913P, "Abortion Prescription Reporting Form", 6/2022[4/2020]; and

(b) Form VS-913, "Report of Abortion", 6/2022[4/2020].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) There material may be obtained, subject to applicable copyright law, at https://chfs.ky.gov/agencies/dph/dehp/vsb/Pages/abreqadr.aspx.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 21, 2022

FILED WITH LRC: June 24, 2022 at 10:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 26, 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 September 19, 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 September 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 the criteria for reporting abortions as described in KRS 213.101 and 2022 Ky. Acts ch. 210.

(b) The necessity of this administrative regulation: KRS 213.101(7) requires the Office of Vital Statistics (OVS) to promulgate administrative regulations for compliance with the reporting requirements of the statute. This administrative regulation is necessary to ensure that each abortion that occurs in the commonwealth is reported to OVS in a timely manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 213.101 requires the reporting of each abortion that occurs in the commonwealth and requires OVS to issue a public report by September 30 each year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows OVS to compile statistical data regarding the number of abortions that occur yearly and the abortion procedures utilized.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the material incorporated by reference for compliance with 2022 Ky. Acts ch. 210.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary because 2022 Ky. Acts ch. 210 expanded the information required to be reported for each abortion. The report forms incorporated by reference were amended to include all required data elements.

(c) How the amendment conforms to the content of the authorizing statutes: 2022 Ky. Act ch. 210 expanded the abortion reporting requirements to include the full name and address of the physician and facility, the age of the father, if known, the Rh negative status of the patient, if the patient was treated for a sexually transmitted disease, the reason for the abortion, any follow-up treatment provided, and additional prescription information.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure all required elements are reported to the cabinet.

(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 any woman seeking an abortion and the physician who performs the abortion. On average, there are 2,616 abortions performed each year. The Office of Vital Statistics within the Department for Public Health will also be impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians who perform abortions will need to be aware of the changes in reporting requirements, will need to monitor a woman who has received an abortion for complications, and will need to make reasonable efforts to ensure the woman receives any necessary follow-up treatment. Pharmacies that dispense the medications will need to be aware of the reporting requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Physicians and pharmacists reporting abortions will have no additional costs associated with this amended administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the reporting requirements, physicians who perform abortions will be in full compliance with the authorizing statutes and will avoid any penalties that would result from violating the statutes. By complying with the medication reporting requirements, pharmacists will be in compliance with the authorizing statutes and will avoid any penalties that would result from violating the statutes.

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

(a) Initially: The required changes to the current reporting data system will cost \$48,000 to implement.

(b) On a continuing basis: Ongoing costs for maintenance of the reporting data system and production of the required reports will be \$18,000 yearly. Staff costs for the Office of Vital Statistics to implement this administrative regulation is \$6,000 yearly.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds 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: This amendment does not require an increase in fees or funding for implementation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no increase in, or establishment of, fees associated with this amendment.

(9) TIERING: Is tiering applied? This administrative regulation impacts all affected 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? This administrative regulation will impact the Office of Vital Statistics within the Division of Epidemiology and Health Planning in the Department for Public Health, Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 213.021, 213.101(1), (7), and 2022 Ky. Acts ch. 210.

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

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

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

(c) How much will it cost to administer this program for the first year? The total costs to implement the changes to the reporting data system as a result of the amendment to this administrative regulation will be \$48,000 for the first year.

(d) How much will it cost to administer this program for subsequent years? Ongoing costs for the reporting data system will be \$18,000 for subsequent years. Staff costs for the Office of Vital Statistics to implement this administrative regulation is \$6,000 yearly.

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 any costs savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? This administrative regulation will not generate any costs savings for the regulated entities.

(c) How much will it cost the regulated entities for the first year? The costs associated with the amendment to this administrative regulation are state costs only. The regulated facilities providing abortions will not have any costs associated with compliance with this administrative regulation. The total state costs in the first year will be \$48,000 for enhancements to the reporting system.

(d) How much will it cost the regulated entities for subsequent years? Ongoing state costs will be approximately \$24,000 a year for reporting system maintenance and staff 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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Fiscal Management

(Amendment)

907 KAR 1:065. Payments for price-based nursing facility services.

RELATES TO: KRS 142.361, 142.363, 216.380, 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 482.58, 483.10, 42 U.S.C. 1395tt, 1396, 1396a, 1396b, 1396c, 1396d, 1396g, 1396l, 1396n, 1396o, 1396p, 1396r, 1396r-2, 1396r-5

STATUTORY AUTHORITY: KRS 142.361(5), 142.363(3), 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 for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid program for services provided by a price-based nursing facility.

Section 1. Definitions.

(1) "Ancillary service" means a direct service for which a charge is customarily billed separately from the per diem rate including:

(a) Ancillary services pursuant to 907 KAR 1:023; or

(b) If ordered by a physician:

1. Laboratory procedures; or

2. X-rays.

(2) "Appraisal" means an evaluation of a price-based nursing facility building, excluding equipment and land, conducted by the department in accordance with Section 4 of this administrative regulation for the purpose of calculating the depreciated replacement cost of a price-based nursing facility.

(3) "Appraisal base year" means a year in which the department conducts an appraisal of each price-based NF.

(4) "Auxiliary building" means a roofed and walled structure:

(a) Serviced by electricity, heating, and cooling;

(b) Independent of an NF;

- (c) Used for administrative or business purposes related to an NF; and
- (d) Constructed on the same tract of ground as an NF.
- (5) "Capital rate component" means a calculated per diem amount for an NF based on:
 - (a) The NF's appraised depreciated replacement cost;
 - (b) A value for land;
 - (c) A value for equipment;
 - (d) A rate of return;
 - (e) A risk factor;
 - (f) The number of calendar days in the NF's cost report year;
 - (g) The number of licensed NF beds in the NF; and
 - (h) The NF's bed occupancy percentage.
- (6) "Case-mix" means the time-weighted average price-based NF acuity for Medicaid-eligible and dual-eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a price-based nursing facility, and is based on Minimum Data Set (MDS) 3.0 data classified through the RUG III, M3 p1, (version 5.20) thirty-four (34) group model resident classification system or equivalent.
- (7) "Core based statistical area" or "CBSA" means the designation of metropolitan and micropolitan population centers based on the national census, as published by the Federal Office of Management and Budget.
- (8) "Department" means the Department for Medicaid Services or its designee.
- (9) "Equipment" means a depreciable tangible asset, other than land or a building, which is used in the provision of care for a resident by an NF staff person.
- (10) "Governmental entity" means a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).
- (11) "Hospital-based NF" means an NF that:
 - (a) Is separately identifiable as a distinct part of the hospital; and
 - (b) If separated into multiple but distinct parts of a single hospital, is combined under one (1) provider number.
- (12) "Land" means a surveyed tract or tracts of ground that share a common boundary:
 - (a) As recorded in a county government office;
 - (b) Upon which a building licensed as an NF is constructed; and
 - (c) Including site preparation and improvements.
- (13) "Local unit of government" means a city, county, special purpose district, or other governmental unit in the state.
- (14) "NF" or "nursing facility" means:
 - (a) A facility:
 - 1. To which the state survey agency has granted an NF license;
 - 2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and
 - 3. To which the department has granted certification for Medicaid participation; or
 - (b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280, and 482.58.
- (15) "NF building" means a roofed and walled structure serviced by electricity, heating, and cooling and that is also an NF.
- (16) "Nursing facility with Medicaid waiver" or "NF-W" means an NF to which the state survey agency has granted a waiver of the nursing staff requirement.
- (17) "Provider assessment" means the assessment imposed by KRS 142.361 and 142.363.
- (18) "Routine services" means the services covered by the Medicaid program pursuant to 42 C.F.R. 483.10(f)(11)(i).
- (19) "Site improvement" means a depreciable asset element, other than an NF building or auxiliary building, on NF land extending beyond an NF's foundation if used for NF-related purposes.
- (20) "Standard price" means a facility-specific reimbursement that includes a case-mix adjusted component, noncase-mix adjusted component including an allowance to offset a provider assessment, noncapital-facility related component, and capital rate component.
- (21) "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health

Care.

(22) "Time-weighted" means a method of calculating case-mix by determining the number of days that a minimum data set (MDS) record is active over a calendar quarter rather than captured from a single day during the calendar quarter.

Section 2. NF Reimbursement Classifications and Criteria.

(1) An NF or a hospital-based NF shall be reimbursed as a price-based NF pursuant to this administrative regulation if:

- (a) It provides NF services to an individual who:
 - 1. Is a Medicaid recipient;
 - 2. Meets the NF patient status criteria pursuant to 907 KAR 1:022; and
 - 3. Occupies a Medicaid-certified bed; and
- (b) 1. It has more than ten (10) NF beds and the greater of:
 - a. Ten (10) of its Medicaid-certified beds participate in the Medicare program; or
 - b. Twenty (20) percent of its Medicaid certified beds participate in the Medicare program; or
- 2. It has less than ten (10) NF beds and all of its NF beds participate in the Medicare program.

(2) An NF-W shall be reimbursed as a price-based NF pursuant to this administrative regulation if it meets the criteria established in subsection (1)(a) of this section.

(3) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025:

- (a) An NF with a certified brain injury unit;
- (b) An NF with a distinct part ventilator unit;
- (c) An NF designated as an institution for mental disease;
- (d) A dually-licensed pediatric facility; or
- (e) An intermediate care facility for individuals with an intellectual disability.

Section 3. Reimbursement for Federally-Defined Swing Beds and for Skilled Nursing Facility Services in Critical Access Hospital Swing Beds.

(1) The reimbursement rate for a federally-defined swing bed shall be:

- (a) The average rate per patient day paid to freestanding price-based NFs for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 14 of this administrative regulation; and
- (b) Established effective January 1 of each year.

(2)(a) The department shall reimburse a critical access hospital for skilled nursing facility services in a swing bed at the same rate as established by the Centers for Medicare and Medicaid Services for Medicare.

(b) The department shall pay an interim per diem rate as established by CMS for the Medicare program.

(c) The effective date of a rate shall be the same as used by the Medicare program.

(d) A critical access hospital's final reimbursement for skilled nursing facility services in a swing bed shall reflect any adjustment made by the Centers for Medicare and Medicaid Services.

(e) Total payments made to a critical access hospital for skilled nursing facility services provided in a swing bed under this section shall be subject to the payment limitation established in 42 C.F.R. 447.271.

(f) The provisions established in this subsection shall apply to a critical access hospital that complies with all requirements established in KRS 216.380.

Section 4. Price-based NF Appraisal. (1) The department shall appraise a price-based NF to determine the facility specific capital component in 2009, and every fifth year, in order to calculate the NF's depreciated replacement cost.

(2) The department shall not appraise equipment or land. A provider shall be given the following values for land and equipment:

- (a) Ten (10) percent of an NF's average licensed bed value for land; and
- (b) \$2,000 per licensed NF bed for equipment.

(3) The department shall utilize the following variables and fields of the nursing home or convalescent center #5200 model of the

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Marshall & Swift Boeckh Building Valuation System (BVS) to appraise an NF identified in Section 2(1) of this administrative regulation:

- (a) Provider number;
- (b) Property owner - NF name;
- (c) Address;
- (d) Zip code;
- (e) Section number - the lowest number shall be assigned to the oldest section and a basement, appraised as a separate section, immediately follows the section it is beneath;
- (f) Occupancy code - nursing home or substructure;
- (g) Average story height;
- (h) Construction type;
- (i) Number of stories;
- (j) Gross floor area (which shall be the determination of the exterior dimensions of all interior areas including stairwells of each floor, specifically excluding outdoor patios, covered walkways, carports, and similar areas). In addition, interior square footage measurements shall be reported for:
 1. A non-NF area;
 2. A shared service area by type of service; and
 3. A revenue-generating area;
- (k) Gross perimeter (common walls between sections shall be excluded from both sections);
- (l) Construction quality;
- (m) Year built;
- (n) Building effective age;
- (o) Building condition;
- (p) Depreciation percent;
- (q) Exterior wall material;
- (r) Roof covering material and roof pitch;
- (s) Heating system;
- (t) Cooling system;
- (u) Floor finish;
- (v) Ceiling finish;
- (w) Partition wall structure and finish;
- (x) Passenger and freight elevators - actual number;
- (y) Fire protection system (sprinklers, manual fire alarms, and automatic fire detection) - percent of gross area served. If both the floor and attic areas are protected by a sprinkler system or automatic detection, the percent of gross area served shall be twice the floor area; and
- (z) Miscellaneous additional features, which shall be limited to:
 1. Canopies;
 2. Entry foyers (sheltered entry ways):
 - a. The glass and aluminum standard allowance shall be thirty (30) dollars per square foot;
 - b. Bulkhead standard allowance shall be:
 - (i) Seven (7) dollars per square foot for a wood frame;
 - (ii) Eight (8) dollars per square foot for a steel frame; or
 - (iii) Twenty (20) dollars per square foot for brick masonry;
 3. Loading docks;
 4. Code alerts, Wanderguards, or other special electronically-secured doorways, except for a door with a sound detector or sensing unit (the standard allowance shall be \$1,500 for each fully-functioning door at the time of appraisal);
 5. A door with a sound detector or sensing unit shall have a standard allowance of \$500 per door;
 6. Automatic sliding doors (the standard allowance shall be \$17,000 per doorway);
 7. An automatic door opener shall have a standard allowance of \$6,500 per door;
 8. Detached garages or storage sheds (which shall have an attached reinforced concrete floor and a minimum of 200 square feet);
 9. Modular buildings or trailers, if the structure has a minimum of 200 square feet, electrical service, and heating or cooling services (the standard allowance shall be fifty-six (56) dollars per square foot);
 10. Walk-in coolers or freezers;
 11. Laundry chutes (the standard allowance shall be \$2,100 per floor serviced);
 12. Dumb waiters (which shall have a minimum speed of fifty

(50) feet per minute. The standard allowance shall be \$8,000 for the initial two (2) stops for a manual door or \$21,000 for the initial two (2) stops for an electric door and \$7,000 per additional stop);

13. Skylights (the standard allowance shall be forty (40) dollars per square foot);
 14. Operable built-in oxygen delivery systems (valued at \$300 per serviced bed);
 15. Carpeted wainscoting (the standard allowance shall be sixty (60) dollars per licensed bed);
 16. Balconies;
 17. Ceiling fans for which the standard allowance shall be \$250 for each ceiling fan without a light and \$400 for each ceiling fan with a light;
 18. Cupolas for which the standard allowance shall be \$720 each;
 19. Fireplaces;
 20. Concrete-lined utility tunnels for which the standard allowance shall be twenty-five (25) dollars per cubic foot; and
 21. Mechanical penthouses.
- (4) An item listed in subsection (3)(z) of this section shall be subject to the Marshall & Swift Boeckh BVS model #5200 monetary limit unless a monetary limit is provided for that item in subsection (3)(z) of this section.
- (5) The department shall use the corresponding Marshall & Swift Boeckh BVS default value for any variable listed in subsection (3) of this section if no other value is stated for that variable in subsection (3) of this section.
- (6)(a) Values from the most recent Marshall & Swift Boeckh BVS tables shall be used during an appraisal.
- (b) An adjustment calculation shall be performed if the most recent Marshall & Swift Boeckh BVS tables do not correspond to an appraisal base year.
- (7) In addition to an appraisal cited in subsection (1) of this section, the department shall appraise an NF identified in Section 2(1) of this administrative regulation if:
- (a) The NF submits written proof of construction costs to the department; and
 - (b)1. The NF undergoes renovations or additions costing a minimum of \$150,000 and the NF has more than sixty (60) licensed beds; or
 2. The NF undergoes renovations or additions costing a minimum of \$75,000 and the NF has sixty (60) or fewer licensed beds.
- (8) An auxiliary building shall be:
- (a) Appraised if it rests on land, as defined in Section 1(12) of this administrative regulation; and
 - (b) Appraised separately from an NF building.
- (9) To appraise an auxiliary building, the department shall utilize a Marshall & Swift Boeckh BVS model other than the nursing home or convalescent center #5200 model, if the model better fits the auxiliary building's use and type.
- (10) If an NF building has beds licensed for non-NF purposes or a provider conducts business activities not related to the NF, the appraisal shall be adjusted between NF and non-NF activity. The appraiser shall determine if the adjustment shall be made by dividing the number of licensed NF beds by the total number of beds, or through the use of an adjustment factor determined in accordance with appraisal industry standards by the appraiser, regardless of the occupancy factor. For example, an adjustment factor may be used to apportion the appraisal by the percent of NF square footage relative to the square footage on non-NF-related business activities.
- (11) Cost of an appraisal shall be the responsibility of the NF being appraised.
- (12) A building held for investment, future expansion, or speculation shall not be considered for appraisal purposes.
- (13) The department shall not consider the following location factors in rendering an appraisal:
- (a) Climate;
 - (b) High-wind zone;
 - (c) Degree of slope;
 - (d) Position;
 - (e) Accessibility; or
 - (f) Soil condition.

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Section 5. Standard Price Overview.

(1) Rates shall reflect the differential in wages, property values, and cost of doing business in rural and urban designated areas.

(2)(a) Except as provided by paragraph (b) of this subsection, and beginning in 2018, on July 1 of each year, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas always being classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.

(b)1. On July 7, 2017, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.

2. On July 7, 2017, a change in designation from:

a. Rural to urban shall take effect on July 1, 2017; and

b. Urban to rural shall take effect July 1, 2018.

(3) The department shall utilize an analysis of fair-market pricing and historical cost for the following data:

(a) Staffing ratios;

(b) Wage rates;

(c) Cost of administration, food, professional support, consultation, and nonpersonnel operating expenses as a percentage of total cost;

(d) Fringe benefit levels;

(e) Capital rate component; and

(f) Noncapital facility-related component.

CBSA Designation	Case-Mix Adjustable Portion of Standard Price	Noncase-Mix Adjustable Portion of Standard Price Without Capital Rate Component	Total Standard Price Excluding Capital Rate Components
Urban	\$88.05	\$62.80	\$150.85
Rural	\$74.62	\$55.63	\$130.25

(8) A price-based NF's standard price shall be adjusted for inflation every July 1 and rebased in 2008.

(9) Effective July 1, 2004, an NF shall not receive a rate less than its standard price.

(10) Effective July 1, 2022:

(a) A nursing home relief reimbursement increase of twenty-nine (29) dollars shall be included in the noncase-mix adjustable portion of the per diem rate.

(b) The nursing home relief reimbursement increase shall be included in the administration line of the calculation and shall not receive annual inflationary adjustments.

(c) The nursing home relief reimbursement increase of twenty-nine (29) dollars shall continue until the standard price is rebased.

(11) The department shall adjust an NF's standard price if:

(a) A governmental entity imposes a mandatory minimum wage or staffing ratio increase and the increase was not included in the inflation adjustment; or

(b) A new licensure requirement or new interpretation of an existing requirement by the state survey agency results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of a licensure requirement or policy interpretation.

Section 6. Standard Price Calculation. (1) Based on the classification of urban or rural, the department shall calculate an individual NF's standard price to be the sum of:

(a) The case-mix adjustable portion of the NF's standard price, adjusted by the NF's current case-mix index pursuant to Section 7 of this administrative regulation;

(b) The noncase-mix adjustable portion of the NF's standard price, which shall include:

1. An allowance to offset a provider assessment; and

2. The nursing home relief reimbursement increase of twenty-nine (29) dollars;

(c) The noncapital facility-related component; and

(d) Pursuant to subsection (2) of this section, the capital rate component.

(2) An NF's capital rate component shall be calculated as

(4) The following components shall comprise the case-mix adjustable portion of an NF's standard price:

(a) The personnel cost of:

1. A director of nursing;

2. A registered nurse (RN);

3. A licensed practical nurse (LPN);

4. A nurse aide;

5. An activities staff person; and

6. A medical records staff person; and

(b) Nonpersonnel operating cost including:

1. Medical supplies; and

2. Activity supplies.

(5) The following components shall comprise the noncase-mix adjustable portion of an NF's standard price:

(a) Administration to include an allowance to offset a provider assessment;

(b) Nondirect care personnel;

(c) Food;

(d) Professional support; and

(e) Consultation.

(6) The following components shall comprise the facility and capital component of an NF's standard price:

(a) The noncapital facility-related component, which shall be a fixed, uniform amount for all price-based NFs; and

(b) The NF's capital rate component, which shall be facility specific.

(7) Excluding capital rate components, the following is an example of an urban and a rural price-based NF's standard price based on rebased wages at the 2008 level:

follows:

(a) The department shall add the total of:

1. The NF's average licensed bed value, which shall:

a. Be determined by dividing the NF's depreciated replacement cost, as determined from an appraisal conducted in accordance with Section 4 of this administrative regulation, by the NF's total licensed NF beds; and

b. Not exceed \$56,003 effective July 1, 2016, which shall be adjusted every July 1 thereafter by the same factor applied to the NF's depreciated replacement cost;

2. A value for land, which shall be ten (10) percent of the NF's average licensed NF bed value, established in accordance with subparagraph 1. of this paragraph; and

3. A value for equipment, which shall be \$2,000 per licensed NF bed;

(b) The department shall multiply the sum of paragraph (a) of this subsection by a rate of return factor, which shall:

1. Be equal to the sum of:

a. The yield on a twenty (20) year treasury bond as of the first business day on or after May 31 of the most recent year; and

b. A risk factor of two (2) percent; and

2. Not be less than nine (9) percent nor exceed twelve (12) percent;

(c) The department shall determine the NF's capital cost-per-bed day by:

1. Dividing the NF's total patient days by the NF's available bed days to determine the NF's occupancy percentage;

2. If the NF's occupancy percentage is less than ninety (90) percent, multiplying ninety (90) percent by 365 days; and

3. If the NF's occupancy percentage exceeds ninety (90) percent, multiplying the NF's occupancy percentage by 365 days; and

(d) The department shall divide the sum of paragraphs (a) and (b) of this subsection by the NF's capital cost-per-bed day established in paragraph (c) of this subsection to determine an NF's capital rate component.

(3) If a change of ownership occurs pursuant to 42 C.F.R. 447.253(d), the new owner shall:

(a) Receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to Section 4(7) of this administrative regulation; and

(b) File an updated provider application with the Medicaid program pursuant to 907 KAR 1:672, Section 3(4).

(4) A new facility shall be:

(a) Classified as a new facility if the facility does not have a July 1, of the current state fiscal year, Medicaid rate;

(b) Determined to be urban or rural; and

(c) Reimbursed at its standard price, which shall:

1. Be based on a case-mix of 1.0;

2. Be adjusted prospectively based upon no less than one (1) complete calendar quarter of available MDS 3.0 data following the facility's Medicaid certification;

3. Utilize \$56,003 effective July 1, 2016, as adjusted through the current state fiscal year as the facility's average licensed NF bed value until the facility is appraised in accordance with Section 4 of this administrative regulation; and

4. Be adjusted, if necessary, following the facility's appraisal if the appraisal determines the facility's average licensed NF bed value to be less than \$56,003 effective July 1, 2016, as adjusted through the current state fiscal year.

(5) The amounts calculated pursuant to subsection (4)(c)3. and 4. of this section shall be adjusted annually consistent with the adjustments made to the depreciated replacement cost, as described in subsection (2)(a)1.b. of this section for the capital component calculation.

Section 7. Minimum Data Set (MDS) 3.0, Resource Utilization Group (RUG) III, and Validation.

(1) A price-based NF's Medicaid MDS data shall be utilized to determine its case-mix index each quarter.

(2) A price-based NF's case-mix index shall be applied to its case-mix adjustable portion of its standard price.

(3) To determine a price-based NF's case-mix index, the department shall:

(a) Calculate case-mix on a time-weighted basis using MDS data:

1. Extracted on the last date of each calendar quarter from the NF's MDS item sets:

a. Included in Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening; and

b. Transmitted by the NF to the Centers for Medicare and Medicaid Services; and

2. Which, if revised, shall be revised no later than the last date of the quarter following the date on which MDS data was extracted. For example, MDS data submitted after September 30, 2016, for the purpose of revision to MDS data extracted June 30, 2016, shall not be utilized;

(b) Classify the data cited in paragraph (a) of this subsection through the RUG III, (M3 p1), version five point twenty (5.20) thirty-four (34) group or equivalent model resident classification system; and

(c) Validate the data cited in paragraph (a) of this subsection as follows:

1. The department shall generate a stratified random sample of twenty-five (25) percent of the Medicaid residents in a price-based NF;

2. The department shall review one (1) MDS assessment from each resident in the sample referenced in subparagraph 1. of this paragraph;

3. The department shall review medical records corresponding to the individuals included in the sample identified in subparagraphs 1. and 2. of this paragraph to determine if the medical records accurately support the MDS assessments submitted for the sample residents; and

4. If a review of records cited in subparagraph 3. of this paragraph reveals that the price-based NF fails to meet the minimum accuracy threshold, the department shall determine if the NF fails to meet the minimum accuracy threshold by reviewing 100 percent of the price-based NF's Medicaid MDS assessments:

a. Extracted in accordance with paragraph (a) of this subsection; and

b. Selecting one (1) MDS assessment per resident.

(4) If the department's review, in accordance with subsection (3)(c)3. and 4. of this section, of a price-based NF's MDS assessment data reveals that the NF fails to meet the MDS data minimum accuracy threshold, the department shall conduct another review of the same data utilizing an individual or individuals not involved in the initial validation process if the price-based NF requests a reconsideration within ten (10) business days of being notified of the findings of the review cited in subsection (3)(c)4. of this section.

(5) Only MDS data extracted in accordance with subsection (3)(a)2. of this section shall be allowed during a review or reconsideration.

(6) If a reconsideration of a price-based NF's MDS assessment data, in accordance with subsection (4) of this section, confirms that the NF fails to meet the minimum accuracy threshold, the department shall:

(a) Conduct a conference with the NF to review preliminary findings of the reconsideration; and

(b) Send the final results of the reconsideration to the NF within ten (10) business days of the conference.

(7) In performing validation reviews on MDS data, the department shall:

(a) Notify the NF at the time of the MDS assessment review of any assessment that is not validated and allow the NF to provide supporting documentation that had been utilized to support the assessment;

(b) Consider all MDS supporting documentation provided by the NF prior to the exit conference; and

(c) Not consider MDS supporting documentation provided by the NF after the exit conference has occurred.

(8)(a) Reconsideration of a price-based NF's MDS assessment data validation shall be provided if the NF:

1. Requests a reconsideration and clearly identifies each specific resident's review and MDS elements that are being disputed;

2. States the basis on which the department's decision on each issue is believed to be erroneous; and

3. Provides a summary supporting the NF's position.

(b) After a reconsideration of a price-based NF's MDS assessment data has been completed, the NF may appeal the department decision regarding the data in accordance with 907 KAR 1:671, Section 9.

(9)(a) The department shall refer any suspected intentional alteration of clinical documentation or creation of documentation after an MDS assessment has been transmitted to the Office of Inspector General (OIG) for investigation of possible fraud.

(b) A fraud investigation may result in a felony or misdemeanor criminal conviction.

(10) An NF's rate shall be effective beginning on the first date of the second quarter following the MDS extraction date.

(11) An MDS validation review, if conducted, shall be initiated in the month containing the corresponding rate effective date.

(12) A rate sanction shall be applied on the rate effective date following the validation review initiation date.

(13) MDS assessment accuracy thresholds and corresponding rate sanctions shall be established in accordance with this subsection.

(a) If a price-based NF's percentage of accurate MDS assessments is between sixty-five (65) and seventy-nine (79) percent, the price-based NF's rate shall be sanctioned by fifty (50) cents per patient day.

(b) If a price-based NF's percentage of accurate MDS assessments is between forty (40) and sixty-four (64) percent, the price-based NF's rate shall be sanctioned by sixty (60) cents per patient day.

(c) If a price-based NF's percentage of accurate MDS assessments is below forty (40) percent, the price-based NF's rate shall be sanctioned by seventy (70) cents per patient day.

Section 8. Limitation on Charges to Residents. (1) Except for applicable deductible and coinsurance amounts, an NF that receives reimbursement for a resident pursuant to Section 6 of this

administrative regulation shall not charge a resident or his representative for the cost of routine or ancillary services.

(2) An NF may charge a resident or his representative for an item pursuant to 42 C.F.R. 483.10(f)(11)(ii) if:

- (a) The item is requested by the resident;
- (b) The NF informs the resident in writing that there will be a charge; and
- (c) Medicare, Medicaid, or another third party does not pay for the item.

(3) An NF shall:

- (a) Not require a resident, or responsible representative of the resident, to request any item or services as a condition of admission or continued stay; and
- (b) Inform a resident, or responsible representative of the resident, requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

(4) Reserved bed days, per resident, for an NF or an NF-W shall be:

(a) Reimbursed for a maximum of fourteen (14) days per calendar year due to hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to relocation;

(b) Reimbursed for a maximum of ten (10) days during a calendar year for leaves of absence other than hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to the relocation;

(c) Reimbursed at seventy-five (75) percent of a facility's rate if the facility's occupancy percent is ninety-five (95) percent or greater for the calendar quarter preceding the bed reserve day; and

(d) Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percent is less than ninety-five (95) percent for the calendar quarter preceding the bed reserve day.

(5) Except for oxygen therapy, durable medical equipment (DME) and supplies shall:

- (a) Be furnished by an NF; and
- (b) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:479, Section 6(3).

(6) Dentures, lenses, frames, or hearing aids shall be paid for through the resident's patient liability or spend down amounts and limited to one (1) replacement per item per calendar year.

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR). (1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

Section 10. Price-Based NF Protection Period and Budget Constraints. (1) A county-owned hospital-based nursing facility shall not receive a rate that is less than the rate that was in effect on June 30, 2002.

(2) For each year of the biennium, a price-based NF shall:

- (a) Receive an adjustment pursuant to Section 5(8) and (11)[(40)] of this administrative regulation; or
- (b) Except for a county-owned hospital-based nursing facility pursuant to subsection (1) of this section, not receive an increase if the price-based NF's rate is greater than its standard price.

Section 11. Cost Report. (1) A Medicare cost report and the Supplemental Medicaid Schedules shall be submitted pursuant to time frames established in the CMS Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-2) Sections 102, 102.1, 102.3, and 104, using the Instructions for Completing the Medicaid Supplemental Schedules.

(2) A copy of a price-based NF's Medicare cost report shall be submitted for the most recent fiscal year end.

Section 12. Ancillary Services. (1) Except for oxygen therapy and for ancillary services provided to an individual in a critical access hospital swing bed, the department shall reimburse for an ancillary service that meets the criteria established in 907 KAR 1:023 utilizing the corresponding outpatient procedure code rate listed in the Medicaid Physician Fee Schedule established in 907 KAR 3:010, Section 3.

(2) The department shall reimburse for an oxygen therapy utilizing the Medicaid DME Program fee schedule established in 907 KAR 1:479.

(3) Respiratory therapy and respiratory therapy supplies shall be a routine service.

(4) Reimbursement for ancillary services provided to an individual in a critical access hospital swing bed shall be included in the critical access hospital swing bed reimbursement established in Section 3(2) of this administrative regulation.

Section 13. Appeal Rights. A price-based NF may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 14. Supplemental Payments to Nonstate Government-Owned or Operated Nursing Facilities. (1) Beginning July 1, 2001, subject to state funding made available for this provision by a transfer of funds from a governmental entity, the department shall make a supplemental payment to a qualified nursing facility.

(2) To qualify for a supplemental payment under this section, a nursing facility shall:

- (a) Be owned or operated by a local unit of government pursuant to 42 C.F.R. 447.272(a)(2);
- (b) Have at least 140 or more Medicaid-certified beds; and
- (c) Have a Medicaid occupancy rate at or above seventy-five (75) percent.

(3) For each state fiscal year, the department shall calculate the maximum supplemental payment that it may make to qualifying nursing facilities in accordance with 42 C.F.R. 447.272.

(4) Using the data reported by a nursing facility on a Schedule NF-7 submitted to the department as of December 31, 2000, the department shall identify each nursing facility that meets the criteria established in subsection (2) of this section.

(5) The department shall determine a supplemental payment factor for a qualifying nursing facility by dividing the qualifying nursing facility's total Medicaid days by the total Medicaid days for all qualifying nursing facilities.

(6) The department shall determine a supplemental payment for a qualifying nursing facility by applying the supplemental payment factor established in subsection (5) of this section to the total amount available for funding under this section.

(7) Total payments made under this section shall not exceed the amount determined in subsection (3) of this section.

(8) Payments made under this section shall:

- (a) Apply to services provided on or after April 1, 2001; and
- (b) Be made on a quarterly basis.

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

- (a) "Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-2), Sections 102, 102.1, 102.3, and 104", October 2007;
- (b) The "Instructions for Completing the Medicaid Supplemental Schedules", April 2015;
- (c) The "Supplemental Medicaid Schedules", April 2015; and
- (d) "Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening", 10/1/2016.

(2) This material may be inspected, copied, or obtained, subject

to applicable copyright law, at the:

(a) Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; and

(b) Following location on the department's Web site: <https://chfs.ky.gov/agencies/dms/dafm/Pages/default.aspx>.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 29, 2022

FILED WITH LRC: July 1, 2022 at 8:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 26, 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 September 19, 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 September 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: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation revises reimbursement for nursing facilities participating in Kentucky Department for Medicaid Services for all non-managed care recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish price-based nursing facility reimbursement provisions.

(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 price-based nursing facility reimbursement provisions.

(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 updated reimbursement rates for nursing facilities providing care to Kentucky Medicaid recipients.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates the \$29 pandemic related reimbursement increase into this administrative regulation. The regulation is also amended to ensure that the \$29 reimbursement increase will be included in nursing facility base rates in the future.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect the permanent addition of a reimbursement increase that has been made in multiple state budgets and to clarify how this additional funding will be reflected in future nursing facility rates.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying how a recent increase in funding will be incorporated into future nursing home rates.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by incorporating needed information about total nursing home facility rates into one administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 290 nursing facilities participating with Medicaid that may 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: Nursing facilities will not have to take any actions 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): There will be no cost to the entities to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will receive a higher reimbursement from Medicaid, and the current reimbursement increase is now scheduled to be incorporated into the base rate for nursing facilities in the future.

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

(a) Initially: DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in HB 1 from the 2022 Regular Session.

(b) On a continuing basis: DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in HB 1 from the 2022 Regular Session.

(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: DMS anticipates that current funding levels will not need to increase due to the \$29 reimbursement increase as this funding has been appropriated in multiple previous state budgets.

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

(9) TIERING: Is tiering applied? Tiering was not applied in this administrative regulation because the administration regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396r(f)(6) and 42 C.F.R. 483.20.

(2) State compliance standards. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 483.20 requires a nursing facility to conduct a resident assessment of each resident.

(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 set stricter requirements.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Neither stricter nor additional standards nor responsibilities are imposed.

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 this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department for Medicaid Services (DMS) anticipates no revenue for state or local government will result from the amendment.

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

(c) How much will it cost to administer this program for the first year? DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in HB 1 from the 2022 Regular Session.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that expenditures for nursing facilities will be consistent with appropriations in HB 1 from the 2022 Regular Session.

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 does anticipate that this

amendment will result in a clear acknowledgement and continuing substantial additional reimbursement for nursing facilities.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Aging and Disability Services
(Amendment)

910 KAR 1:090. Personal care attendant program and assistance services.

RELATES TO: KRS 12.290, Chapter 13B, 205.455(4), 205.8451(3), 205.900 - 205.925

STATUTORY AUTHORITY: KRS 194A.050(1), 205.910, 205.920

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.910 requires the Cabinet for Health and Family Services to establish an eligibility standard for personal care assistance services which takes into consideration the unique economic and social needs of severely physically disabled adults. KRS 205.920 authorizes the cabinet to promulgate administrative regulations to implement provisions concerning personal care assistance services. This administrative regulation establishes the personal care attendant program.

Section 1. Definitions. (1) "Administrative support personnel" means staff designated within a contract agency who offer technical assistance to, and monitor the activities of, the qualified agency.

(2) "Approved plan" means an agreement between the department and a contract agency to administer the personal care attendant program.

(3) "Assessment" means the collection and evaluation of information:

(a) About a person's situation and functioning;

(b) To determine the applicant's or participant's service level; and

(c) To develop a plan of care utilizing a holistic, person centered approach by the evaluation team.

(4) "Attendant" means a person who provides personal care assistance services.

(5) "Contract agency" means the agency with which the cabinet has contracted to administer the personal care attendant program.

(6) "Department" means the Department for Aging and Independent Living or its designee.

(7) "Evaluation team" is defined by KRS 205.900(2).

(8) "Evaluation team's recommendations" means the official response of the evaluation team signed by all three (3) team members.

(9) "Immediate family member" is defined by KRS 205.8451(3) [means a legal guardian, parent, step parent, foster parent, adoptive parent, sibling, grandparent, child, or spouse].

(10) "Income eligibility standard" means a formula to determine an applicant's income eligibility for the personal care attendant program pursuant to KRS 205.910(1).

(11) "Natural supports" means a non-paid person or persons or community resource, that can provide, or has historically provided, assistance to the participant or due to the familial relationship, would be expected to provide assistance.

(12) "Participant" means a person accepted into the personal care attendant program and who has met the eligibility requirements of a severely physically disabled adult.

(13) "PCAP" means personal care attendant program.

(14) "Personal care assistance services" is defined by KRS 205.900(3).

(15) [(14)] "Prescreening" means a process that assesses whether or not an applicant appears to meet the basic requirements for eligibility.

(16) [(15)] "Qualified agency or organization" is defined by KRS 205.900(4).

(17) [(16)] "Reassessment" means reevaluation of the situation and functioning of a client.

(18) [(17)] "Service area" means those counties listed in an approved plan of the qualified agency or organization.

~~(19)~~~~(18)~~ "Severely physically disabled adult" is defined by KRS 205.900(6).

~~(20)~~~~(19)~~ "Subsidy" means a financial reimbursement paid by the cabinet to an adult who qualifies to receive personal care assistance services in accordance with KRS 205.905(1).

~~(21)~~~~(20)~~ "Work agreement" means an agreement of time and tasks developed by the participant as the employer for the attendant as the employee.

Section 2. Eligibility. (1) To be eligible for participation in the personal care attendant program an applicant shall:

- (a) Be a severely physically disabled adult who:
 - 1. Meets the qualifications required by KRS 205.905(1); and
 - 2. Has the ability to be responsible for performing the functions required by KRS 205.905(2) to receive a subsidy;
- (b) Agree to obtain an initial assessment for eligibility and a ~~reassessment~~~~[re-assessment]~~ at least annually by an evaluation team in accordance with KRS 205.905(2)(b)1 and 2;
- (c) Be able to reside or reside in a non-institutional setting;
- (d) Work with a program coordinator in establishing a work agreement between the participant and attendant;
- (e) Be responsible for attendant payroll reports and computing required employer tax statements;
- (f) Have immediate family or natural supports to meet the individual's needs if a paid attendant is not available; and
- (g) Not be receiving the same services obtainable from any federal, state, or combination of federal and state funded programs. If the individual's needs cannot be met with the funding received from any of those programs, the individual may be eligible to receive personal care attendant program services above and beyond what the other programs provide.

(2) An applicant shall be accepted for service if:

- (a) The evaluation team determines that the applicant is eligible to participate in the program in accordance with this section;
 - (b) The department agrees that the determination in accordance with this section; and
 - (c) Funds are available.
- (3) An applicant shall be income eligible if they are eligible for:
- (a) Supplemental Security Income; or
 - (b) Medicaid.

(4) If an applicant's gross annual income is less than 200 percent of the official poverty income guidelines published annually in the Federal Register by the United States Department of Health and Human Services, the applicant shall be income eligible.

(5) If an applicant is not eligible pursuant to subsections (3) or (4) of this section, the income eligibility standard shall be determined by a program coordinator using the PCAP-05 Income Eligibility form as follows:

(a) The program coordinator shall determine the adjusted gross income by deducting:

- 1. The cost of unreimbursed extraordinary medical expenses, and impairment-related expenses as recorded on the PCAP-05;
- 2. An amount adjusted for family size based on 200 percent of the official poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services; and
- 3. Dependent care expenses.

(b) If the adjusted gross income is less than 200 percent of the annual federal poverty guidelines, the applicant shall be income eligible.

(c) If the adjusted gross income is more than 200 percent of the annual federal poverty guidelines, the following shall be used to determine the applicant's contribution to cost of care:

- 1. From the adjusted gross income subtract a current annual standard deduction for one (1) as determined by the Internal Revenue Service;
- 2. Divide the remaining income by two (2) to allow for the unique economic and social needs of the severely disabled adult;
- 3. Divide the final income by fifty-two (52) weeks; and
- 4. Calculate the estimated cost of personal care services by multiplying the estimated number of hours of personal care assistance services per week times the cost per hour of service.

(d)1. If the resulting monetary amount in subparagraph

~~[paragraph (e)]~~3. of this subsection is less than the estimated cost of services calculated in subparagraph ~~[paragraph (e)]~~4. of this subsection, the qualified agency shall provide the full subsidy.

2. If the resulting monetary amount in subparagraph ~~[paragraph (e)]~~3. of this subsection is more than the estimated cost of services calculated in subparagraph ~~[paragraph (e)]~~4. of this subsection, the participant shall pay the difference between the cost of services and the qualified agency's maximum hourly rate.

(6) The income eligibility criteria set out in subsections (3) through (5) of this section shall be applied to a current participant at the time of the participant's next reassessment.

Section 3. Application and Evaluation. (1) A referral to the personal care attendant program may be made by:

- (a) The applicant;
 - (b) Family, with applicant knowledge;
 - (c) Another person, with applicant knowledge; or
 - (d) Agency, with applicant knowledge.
- (2) If an opening for services is available, a program coordinator shall:

- (a) Visit and assist an applicant in the completion of a PCAP-01 Application for Services; and
- (b) Complete and have all evaluation team members sign a PCAP-04 Evaluation Team Findings and Recommendations.

(3) A qualified agency shall:

- (a) Report an evaluation team's findings and recommendations to the contract agency for final review of the applicant or participant; and
- (b) Notify the applicant or participant if the findings and recommendations are accepted by the contract agency.

(4) A contract agency shall:

- (a) Review recommendations of the evaluation team and notify the qualified agency in writing of the final determination within ten (10) business days of receipt of the recommendations; and
- (b) Notify the applicant or participant in writing within twenty (20) business days of receipt of the recommendations in accordance with KRS 205.905(3):

- 1. Whether the recommendations of the evaluation team are accepted or not accepted; and
- 2. The reasons for the contract agency's decision.

Section 4. Waiting List. (1) If the personal care attendant program is at capacity, an eligible applicant shall be placed on a department~~(an)~~ approved waiting list and, as a vacancy occurs, be accepted for services in priority order based on the following categories:

- (a) Emergency situation because of an imminent danger to self or at risk of institutionalization;
- (b) Urgent situation because there are no community supports; or
- (c) Stable because there is a currently reasonable support system.

(2) Every effort shall be used to provide referrals to other services if personal care assistance services are not available.

Section 5. Relocation. (1) If an eligible participant receiving personal care assistance services relocates to another service area to complete a training or educational course, the participant shall remain a client of the service area of origin, if the:

- (a) Participant considers the personal care attendant program service area of origin to be his or her place of residence; and
- (b) Participant's purpose for relocation is to complete a course of education or training to increase employment skills.

(2) The receiving service area shall provide courtesy monitoring to coordinate the aspects of program requirements.

(3) The service area of origin shall retain responsibility for:

- (a) Payment of a subsidy, if the participant meets eligibility for the duration of the educational or training course; and
- (b) Monthly programmatic and financial reports.

(4) The receiving service area shall forward a copy of reports to the service area of origin by the fifth (5th) of the following month.

(5) If a participant moves from one service area of origin to another for any reason other than relocation for a training or

educational course, the participant's program funding shall be transferred to the receiving service area.

(6) If a participant's personal care assistance services terminate, the program funding shall return to the service area of origin.

Section 6. Suspension of Services. (1) Suspension of services shall occur for the following reasons:

(a) Condition improved – on reassessment a participant is determined to need less than fourteen (14) hours of care per week;

(b) Condition worsened - on reassessment a participant is determined to need more hours of care than the program can provide and to be in danger if left alone due to lack of other caregivers;

(c) Participant's behavior clearly presents a danger to the program coordinator or attendant;

(d) Participant does not submit required employer taxes to the qualified agency;

(e) Participant moves from Kentucky;

~~[(f) Participant moves into an area of Kentucky where no services are contracted, unless the closest qualified agency determines that it remains feasible to provide services to the relocation area;]~~

~~[(f)]~~ Participant fails to hire an attendant;

~~[(g)]~~ Participant dies;

~~[(h)]~~ Participant chooses to:

1. Give up personal care assistance services; and

2. Be admitted to a long-term care facility; or

~~[(i)]~~ Participant requests suspension of services.

(2) Services may be suspended if either of the following occurs:

(a) A non-return of an overpayment of services; or

(b) An intentional deception to obtain services.

(3) Suspension of services shall occur if there are any substantiated deceptive practices of paying for services that are:

(a) Not actually provided; or

(b) Duplicative services obtained through another program or agency at the same time.

Section 7. Participant Responsibilities. A participant shall:

(1) Meet the eligibility requirements to receive a subsidy set out in Section 2(1) of this administrative regulation;

(2) Select an attendant for personal care assistance services including screening and interviewing the attendant for employment;

(3) Instruct the attendant on specific personal care assistance services;

(4) Evaluate the attendant's personal care assistance services;

(5) Discuss and come to a written agreement with each attendant about:

(a) Services that shall be provided; and

(b) The terms of employment including:

1. Time;

2. Hours;

3. Duties; and

4. Responsibilities;

(6) Keep records and report to the qualified agency attendant hours worked for payment to the attendant;

(7) Be responsible for all requirements of being an employer, including:

(a) Employee payroll;

(b) Withholdings;

(c) Actual payment of required withholdings;

(d) Taxes appropriate to being an employer; and

(e) Issuing the employee a W-2 as required by the Internal Revenue Service;

(8) Negotiate for room and board for an attendant as specified in Section 9(4)(a) of this administrative regulation; and

(9) Coordinate with a program coordinator the aspects of program requirements.

Section 8. Attendant Responsibilities. (1) An attendant shall:

(a) Enter into and comply with the written agreement for terms of work required by Section 7(5) of this administrative regulation;

(b) Perform personal care assistance services and other tasks that may include:

1. Turning;

2. Repositioning;

3. Transferring;

4. Assistance with oxygen;

5. Hygiene;

6. Grooming;

7. Washing hair;

8. Skin care;

9. Shopping;

10. Transportation;

11. Chores;

12. Light correspondence;

13. Equipment cleaning; and

14. Emergency procedures, if necessary;

(c) Perform tasks consistent with the work agreement as instructed by the participant;

(d) Report to work as scheduled;

(e) Maintain the privacy and confidentiality of the participant;

(f) If unable to report for work as scheduled, notify the participant at least six (6) hours in advance unless an emergency arises;

(g) Maintain a list of emergency numbers;

(h) ~~Participate in~~Attend] attendant training provided by the participant related to his or her specific care needs and, if applicable, training related to dementia care, specified by 910 KAR 4:010;

(i) Keep a daily record of hours worked and services rendered;

(j) Submit to the participant documents and material necessary to comply with the formal payment process;

(k) Meet with the participant and program coordinator for monitoring and coordinating the aspects of the program;

(l) Disclose misdemeanor or felony convictions to the applicant or participant through a law enforcement agency;

(m) Authorize a qualified agency to obtain a criminal background check from the Kentucky National Background Check Program as defined in 906 KAR 1:190~~[Kentucky nurse aide registry, central registry, Adult Protective Services caregiver misconduct registry, and criminal background checks as specified in Section 11(6) of this administrative regulation];~~ and

(n) Notify the program coordinator of conditions which seriously threaten the health, [or] safety, or welfare of the participant or attendant.

(2) An individual shall not be hired as an attendant if the individual:

(a) Has not submitted to the background checks specified in subsection (1)(m) of this section;

~~[(b) Is on any of the following registries:~~

~~1. Kentucky nurse aide registry;~~

~~2. Adult Protective Services caregiver misconduct registry; or~~

~~3. Central registry;]~~

~~[(b)]~~ Has pled guilty or been convicted of committing:

1. A felony crime related to theft or drugs; or

2. A misdemeanor or felony crime related to sexual or violent offenses including assault; or

~~[(c)]~~ Is not able to understand and carry out a participant's instructions.

Section 9. Attendant Payment. (1) The amount of attendant payment shall be in compliance with the following:

(a) The maximum hourly subsidized rate for direct personal care assistance services shall be eleven (11) dollars per hour~~[no more than ten (10) percent over the current minimum wage rate established by KRS 337.275].~~

(b) If the hourly subsidized rate established in paragraph (a) of this subsection is insufficient to obtain direct personal care assistance services in a specific Kentucky service area, a provider may request a higher rate by mailing a written request and justification of the need for a higher rate to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Minimum hours for direct personal care assistance services per week shall be fourteen (14).

(d) Maximum hours for direct personal care assistance services per week shall be forty (40).

(2) In an extreme situation that results in a temporary increased

need for services, such as the illness of the participant, or illness or death of a caregiver, a temporary waiver of maximum hours and the resulting cost may be granted by the contract agency.

(3) A special night rate may be negotiated:

(a) If a participant does not:

1. Require an attendant during the day; or

2. Need direct personal care assistance services from this attendant; or

(b) To provide for caregiver respite service.

(4)(a) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate, if necessary, with a potential attendant on room and board for personal care assistance services.

(b) A live-in attendant shall not be excluded from employment as a part-time attendant.

(c) Maximum payment under this arrangement shall be for forty (40) hours of personal care assistance services per week, and overtime shall not be provided or paid.

Section 10. Program Coordinator Qualifications and Responsibilities. (1) A program coordinator shall meet at least one (1) of the following minimum qualifying requirements:

(a) A bachelor's degree with two (2) years experience working in the disability community; or

(b) Completion of fifty-four (54) semester hours of college with four (4) years working in the disability community.

(2) The department may waive the education requirements required by subsection (1) of this section based on consideration of work experience involving:

(a) Interviewing to select an employment candidate;

(b) More than five (5) years of experience working with the disability community;

(c) Administrative work involving:

1. The review of assessment criteria;

2. Monitoring program compliance;

3. Training program participants, employees, and staff regarding program requirements; or

(d) Determination of eligibility for human services programs.

(3) If employed, a program coordinator shall complete the following hours of training:

(a) Within thirty (30) working days of hire:

1. Complete a minimum of sixteen (16) hours of orientation program training; and

2. Shadow an experienced program coordinator for one (1) to two (2) days;

(b) Within the first six (6) months of employment, complete a minimum of fourteen (14) hours of initial program coordination training; and

(c) Complete follow-up quarterly trainings with the department and contract agency.

(4) A program coordinator shall:

(a) Collaborate with the evaluation team to determine if an applicant is eligible to participate in the personal care attendant program in accordance with Section 2 of this administrative regulation;

(b) Complete the application process required by Section 3(2)(a) of this administrative regulation;

(c) Maintain a waiting list of eligible applicants who are unable to be funded for program participation until an opening occurs; and

(d) Perform the assessments required in Section 12(2) of this administrative regulations.

(5) A program coordinator or program coordinator's designee shall:

(a) Identify severely physically disabled adults who may be eligible for participation in the personal care attendant program;

(b) Prescreen an applicant for eligibility to participate in the personal care attendant program;

(c) Assist a participant in learning how to conduct an interview and screen a prospective attendant;

(d) Assist in or arrange for the training of the attendant, if necessary;

(e) Review with the participant the results of an assessment or reassessment signed by an evaluation team;

(f) Assist the participant in completing and updating a PCAP-06 Plan of Care;

(g) Assist the participant in developing a work agreement between the participant and attendant;

(h) Obtain a PCAP-02 Authorization for Release of Confidential Information from the participant;

(i) Monitor the program with each participant on a quarterly basis, including:

1. A face-to-face visit with the participant during at least two (2) of the quarters; and

2. Making verbal contact with the participant in the quarters that a face-to-face visit is not made;

(j) Assist the participant in finding a back-up attendant for:

1. An emergency; or

2. The regular attendant's time off;

(k) Assist in the recruitment and referral of an attendant, if requested;

(l) Submit monthly activity reports to a qualified agency as specified in Section 15(2) of this administrative regulation by the fifth (5th) of the following month; and

(m) Assure that the participant:

1. Enters into agreement to pay employee taxes with a PCAP-03 Employer Tax Agreement; and

2. Receives training in recordkeeping and tax responsibilities related to services.

Section 11. Qualified Agency Responsibilities. A qualified agency shall:

(1) Employ or contract with an evaluation team pursuant to KRS 205.905(2);

(2) Provide monthly programmatic and financial reports on an attendant per participant to the contract agency by the fifth (5th) of the following month;

(3) Develop a procedure for:

(a) Payment of a subsidy; and

(b) Establishment of appropriate fiscal control within the qualified agency;

(4) Employ or contract for the services of a program coordinator;

(5) Oversee the training requirements for a program coordinator as specified in Section 10(3) of this administrative regulation;

(6) Obtain a criminal background check from the Kentucky National Background Check Program as defined in 906 KAR 1:190 ~~the following~~ on a potential attendant; ~~and~~

~~[(a) The results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency, if the potential attendant resided or worked outside of Kentucky during the year prior to employment;~~

~~(b) Within thirty (30) days of the date of hire, the results of a central registry check as described in 922 KAR 1:470; and~~

~~(c) Prior to employment, the results of a nurse aide registry check as described in 906 KAR 1:100;]~~

(7) Report evaluation team findings and recommendations to a contract agency as specified in Section 3(3) of this administrative regulation;

(8) Maintain participant records as required by Section 15(1) of this administrative regulation; and

(9) Provide accessibility to services through proper evaluation of applicants who are deaf or hard-of-hearing by utilizing an interpreter service in accordance with KRS 12.290.

Section 12. Evaluation Team Members and Responsibilities. (1) An evaluation team:

(a) Shall consist of a program coordinator; and

(b) May consist of:

1. An occupational or physical therapist;

2. A registered nurse;

3. A director or executive director of the qualified agency;

4. A fiscal officer of the qualified agency;

5. A mental health provider;

6. An in-home services coordinator; or

7. Another entity involved in the participant's care.

(2) The program coordinator of the evaluation team shall complete:

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(a) An applicant's initial assessment to establish eligibility pursuant to KRS 205.905(2)(b)1; and

(b) A participant's reassessment, at least annually for continuing services pursuant to KRS 205.905(2)(b)2, or more frequently if changes occur in the participant's situation.

Section 13. Contract Agency Responsibilities. The contract agency shall:

(1) Implement a personal care attendant program according to an approved plan;

(2) Assume fiscal accountability for state funds designated for the program;

(3) Provide necessary administrative support personnel within a contract agency office;

(4) Provide an appeals procedure and hearing process in compliance with:

(a) KRS Chapter 13B; and

(b) KRS 205.915;

(5) Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with cabinet financial audit requirements;

(6) Provide, in conjunction with a qualified agency, a procedure for attendant payment;

(7) Review recommendations of an evaluation team and notify a participant and qualified agency as specified in Section 3(4) of this administrative regulation;

(8) Submit monthly program reports along with the submission of financial invoices to the department as specified in Section 15(3) of this administrative regulation; and

(9) Maintain files and records for cabinet audit, including participant records and statistical reports in accordance with Kentucky Department for Libraries and Archives Records Retention Schedule.

Section 14. Department Responsibilities. The department shall:

(1) Provide a format for the approved plan for the personal care attendant program;

(2) Review proposed plans submitted by a contract agency to administer the personal care attendant program;

(3) Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program that shall include one (1) of the following outcomes:

(a) Approve the plan as submitted;

(b) Require the contract agency to revise the plan; or

(c) Reject the plan;

(4) Monitor the contract agency at least annually;

(5) Develop and revise program and fiscal requirements;

(6) Allocate available funding;

(7) Advocate for program expansion; and

(8) Provide technical assistance.

Section 15. Reporting and Recording. (1) An individual record for each participant shall be maintained by the qualified agency and shall include:

(a) The forms specified in Section 17 of this administrative regulation;

(b) A chronological record of contacts with:

1. The participant;

2. The family;

3. The physician; and

4. Others involved in care with quarterly monitoring reports; and

(c) An assessment record of eligibility.

(2) A program coordinator shall:

(a) Submit completed reports for monthly activities to a qualified agency by a designated date in the contract; and

(b) Forward a copy to the contract agency.

(3) A contract agency shall make a copy of reports on monthly activities available to the department.

Section 16. Appeals. An applicant or participant may request an informal dispute resolution or an appeal:

(1) A recipient may request an informal dispute resolution.

(2) A dispute resolution shall be limited to:

(a) The denial, reduction, or termination of a:

1. Personal care attendant program plan; or

2. Personal care attendant program plan amendment;

(b) The reduction of personal care attendant program funding as requested in the plan; or

(c) The reduction or termination of personal care attendant program grant program funding, unless due to state budget cuts.

(3) A request for an informal dispute resolution shall:

(a) Be submitted to the department's PCAP program coordinator within thirty (30) days following the notification by the personal care attendant program grant program coordinator of a decision in subsection (2) of this section; and

(b) Contain the following information:

1. Name, address, and telephone number of the recipient;

2. Decision being disputed;

3. Justification for the dispute;

4. Documentation supporting the dispute; and

5. Signature of person requesting the dispute resolution.

(4) The dispute resolution shall be heard by:

(a) Three (3) members of the council, one (1) of whom shall be the chairman or the chairman's designee;

(b) One (1) member of the review team; and

(c) The personal care attendant program grant program coordinator.

(5) The recipient shall be provided an opportunity to appear before the dispute resolution team to present facts or concerns about the denial, reduction, or termination of the grant.

(6) The dispute resolution team shall inform a recipient, in writing, of the decision resulting from the dispute resolution within ten (10) business days of the review.

(7) A recipient dissatisfied with the result of the dispute resolution may request an appeal:

(a) [(4)] In accordance with:

1. [(a)] KRS Chapter 13B; and

2. [(b)] KRS 205.915; and

(b) [(2)] Within thirty (30) days of any decision by the:

1. [(a)] Cabinet;

2. [(b)] Contract agency; or

3. [(c)] Qualified agency.

Section 17. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "PCAP-01 Application for Services", edition 4/2018;

(b) "PCAP-02 Authorization for Release of Confidential Information", edition 4/2018;

(c) "PCAP-03 Employer Tax Agreement", edition 4/2018;

(d) "PCAP-04 Evaluation Team Findings and Recommendations", edition 4/2018;

(e) "PCAP-05 Income Eligibility", edition 4/2018; and

(f) "PCAP-06 Plan of Care", edition 4/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dail/Pages/default.aspx>.
910 KAR 1:090

VICTORIA ELRIDGE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 21, 2022

FILED WITH LRC: July 1, 2022 at 8:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 26, 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 September 19, 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 September 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: Robin Boggs and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for a subsidy for personal care assistance outlined in KRS 205.905 to individuals with functional loss of two or more limbs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to operate the personal care attendant program as established in KRS 205.905.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the statute by establishing eligibility and implementation of the personal care attendant program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the personal care attendant program to operate in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: The amendment will increase the subsidy paid to caregivers. Other amendments were made to align with the CHFS background check process as well as to clarify the appeals and hearing process.

(b) The necessity of the amendment to this administrative regulation: It is necessary to update the administrative regulation to support recipients in finding caregivers and paying them a more competitive wage. Currently, caregivers are hard to find as other programs have a higher rate of pay.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments improve the program, specifically the rate of pay for the caregivers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates background check information, aligning it with other programs at CHFS.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This will positively affect more than 175 Kentuckians who are enrolled in this program by increasing the subsidy so that participants may competitively hire caregivers. The employees will also benefit as they will be paid an increased wage. State and local government will see an increase in payroll taxes due to increased wages. There are six entities contracted to provide this service, but it will not have any affect as it is just an increase in the subsidy rate.

(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 contracted to provide personal care attendant services will have to increase the workers' wages from \$7.25 to \$11 per hour.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): This amendment will not increase the cost of the program to outside entities nor the state agency. The cost will be within budgeted funds for this program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals enrolled in the program will be able to offer potential caregivers a more competitive rate of pay, thereby increasing the likelihood of maintaining their services.

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

(a) Initially: There will be no initial implementation cost for this amendment.

(b) On a continuing basis: The currently budgeted General Funds will continue to be the ongoing cost of this service.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation is General Funds.

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

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

(9) TIERING: Is tiering applied? No tiering is applied because the administrative regulation equally applies to all individuals and entities.

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 Aging and Independent Living will need to adjust the rate of reimbursement for personal care attendant services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.905 Subsidy for personal care assistance.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will have a neutral effect on revenue for DAIL, however state and local payroll tax revenue will increase due to increased wages. Expenditures for this program will remain within the established program budget.

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

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

(c) How much will it cost to administer this program for the first year? It will cost approximately \$4,345,836 to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? It will cost approximately \$4,345,836 to administer this program for subsequent years.

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

Revenues (+/-):

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? No cost savings will be generated for this administrative regulation in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? No cost savings will be generated for this administrative regulation in subsequent years.

(c) How much will it cost the regulated entities for the first year? No cost to regulated entities for the first year.

(d) How much will it cost the regulated entities for subsequent years? No cost to regulated entities for the subsequent years.

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

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 will have no major economic impact.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(Amendment)

921 KAR 1:400. Establishment, review, and modification of child support and medical support orders.

RELATES TO: KRS 205.710-[,205.802, 205.990, 213.046(4), (9), 403.160(1), (2)(a), (b), 403.210-403.240, 405.430, 405.440, 405.450, 405.991, 406.021, 406.025, 454.220, 45 C.F.R. 302.50, 302.56, 302.80, 303.4, 303.8, 303.30-303.32, 42 U.S.C. 651-669B
 STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.795 and 405.520 authorize the secretary of the cabinet to promulgate administrative regulations to operate the Child Support Enforcement Program in accordance with federal law and regulations. This administrative regulation establishes the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established.

(1) A child support and medical support obligation shall be established by:

- (a) A court of competent jurisdiction; or
- (b) An administrative order.

(2) The obligation shall be the amount as established administratively or judicially, as computed by the:

- (a) CS-71, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation;
- (b) CS-71.1, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation Exception; or

(c) Any other child support obligation form incorporated by reference in an administrative regulation promulgated by the agency.

(3) The amount determined shall be the amount to be collected. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statutes and legal process in establishing the amount

of a child support and medical support obligation, including KRS 403.211, 403.212, 405.430, and 454.220.

(5) In addition to the deductions established in KRS 403.212(2), the deduction for a prior-born child residing with a parent for an administratively or judicially imputed child support obligation, as established in KRS 403.212(2)(h)3, shall be calculated by using:

(a) That parent's portion of the total support obligation as indicated on the worksheet, if:

- 1. There is a support order; and
- 2. A copy of the child support obligation worksheet is obtained;

or

(b) 100 percent of the income of the parent with whom the prior born child resides, if:

- 1. There is no support order;
- 2. There is a support order, but no support obligation worksheet;

or

- 3. A worksheet cannot be obtained.

(6) In accordance with 45 C.F.R. 303.4(d), within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

- (a) Complete service of process; or
- (b) Document an unsuccessful attempt to serve process.

(7) If service of process has been completed, the cabinet shall, if necessary:

- (a) Establish paternity;
- (b) Establish a child support or medical support obligation; or
- (c) Send a copy of any legal proceeding to the obligor and obligee within fourteen (14) calendar days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment.

(1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:

- (a) Paternity is not in question;
- (b) There is no existing order of support for the child;
- (c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and
- (d) The noncustodial parent's, or obligor's, address is known.

(2) To gather necessary information for administrative establishment, as appropriate the cabinet shall:

- (a) Send to the custodial parent or nonparent custodian forms:
 - 1. CS-133, Custodial Parent Information Request;
 - 2. CS-132, Child Care Expense Verification; and
 - 3. CS-136, Health Insurance Information Request;
- (b) Send to the custodial parent the CS-65, Statement of Income and Resources;

(c) Send to the noncustodial parent forms:

- 1. CS-64, Noncustodial Parent Appointment Letter;
- 2. CS-65, Statement of Income and Resources;
- 3. CS-132, Child Care Expense Verification; and
- 4. CS-136, Health Insurance Information Request;

(d) Send a CS-130, Income Information Request, to the employer of the:

- 1. Custodial parent; or
- 2. Noncustodial parent, or obligor; and
- (e) Issue a CS-84 Administrative Subpoena in accordance with KRS 205.712(2)(k) and (n), if appropriate.

(3) The cabinet shall determine the monthly support obligation in accordance with the child support guidelines as contained in KRS 403.212 or subsection (4) of this section.

(4) In a default case, the cabinet shall establish the obligation based upon the needs of the child or the previous standard of living of the child, whichever is greater in accordance with KRS 403.211(5).

(5) After the monthly support obligation is determined, the cabinet shall serve a CS-66, Administrative Order/Notice of Monthly Support Obligation, in accordance with the requirements of KRS 405.440 and 42 U.S.C. 654(12).

(6) The cabinet shall not administratively modify an obligation that is established by a court of competent jurisdiction, except as provided in subsection (7) of this section.

(7) If support rights are assigned to the cabinet, the cabinet shall direct the obligor to pay to the appropriate entity by modifying the order:

- (a) Administratively upon notice to the obligor or obligee; or
- (b) Judicially through a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders.

(1) In accordance with KRS 405.430(6), the cabinet may modify the monthly support established. Every thirty-six (36) months the cabinet shall notify each party subject to a child support order of the right to request a review of the order.

(2) Pursuant to 45 C.F.R. 303.8, the cabinet shall conduct a review upon the request of:

- (a) Either parent;
- (b) The state agency with assignment; or
- (c) Another party with standing to request a modification.

(3) In accordance with 45 C.F.R. 303.8(e), within 180 days of receiving a request for review or of locating the nonrequesting parent, whichever occurs later, the cabinet shall:

- (a) Conduct the review;
- (b) Modify the order; or
- (c) Determine that circumstances do not meet criteria for modification.

(4) The cabinet shall provide notification within fourteen (14) calendar days of modification or determination to each parent or custodian, if appropriate, and legal representatives by issuing a CS-79, Notification of Review Determination, in accordance with KRS 205.712(2)(m).

(5) In accordance with subsections (2) and (3) of this section, the cabinet or the cabinet's designee shall seek modification of an administrative or judicial support order to include medical support on behalf of the child as established in KRS 403.211(7)(a) through (d).

(6) Retroactive modification of a child support order shall occur in accordance with KRS 403.211(5) and 403.213(1).

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "CS-64, Noncustodial Parent Appointment Letter", 3/10;
- (b) "CS-65, Statement of Income and Resources", 6/2021;
- (c) "CS-66, Administrative Order/Notice of Monthly Support Obligation", 3/10;
- (d) "CS-71, Commonwealth of Kentucky[,] Worksheet for Monthly Child Support Obligation", 7/2022[6/2024];
- (e) "CS-71.1, Commonwealth of Kentucky[,] Worksheet for Monthly Child Support Obligation Exception", 7/2022[6/2024];
- (f) "CS-79, Notification of Review Determination", 3/10;
- (g) "CS-84, Administrative Subpoena", 7/2022[8/48];
- (h) "CS-130, Income Information Request", 7/2022[3/40];
- (i) "CS-132, Child Care Expense Verification", 3/10;
- (j) "CS-133, Custodial Parent Information Request", 3/10; and
- (k) "CS-136, Health Insurance Information Request", 12/15.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dis/Pages/cse.aspx> [<https://chfs.ky.gov/agencies/dis/Pages/regs.aspx>].

STEVEN P. VENNO, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 6, 2022

FILED WITH LRC: July 11, 2022 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 26, 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 September 19, 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 September 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: Joe Barnett or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the establishment, review and modification of child and medical support orders.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement requirements for the establishment, review, and modification of child and medical support orders in accordance with 42 U.S.C. 651-654, 656, 666, 667, 669B, and 45 C.F.R. 302 and 303.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050(1), 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-669B to establish, review, and modify child support and medical support obligations. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist with further establishing procedures to ensure effective administration of and conforming to KRS 403.211 through 403.213.

(2) If 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 provides an update in material incorporated by reference, Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation (CS-71) and the Commonwealth of Kentucky Worksheet for Monthly Child Support Obligation (CS-71.1). Citations referenced in the procedural instructions portion of the form were updated through Ky. Acts ch. 122. The Income Information Request (CS-130) was updated to add the caseworker's email address, and the Administrative Subpoena (CS-84) was updated to mirror the federal form.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by updating the statutes referenced in the procedural instructions of the CS-71 and CS-71.1, the CS-130 to add the caseworker's email address, to update the CSE web address, and the CS-84 to mirror the federal form.

(d) How the amendment will assist in the effective administration of the statutes: Citations referenced in the procedural instructions portion of the CS-71 and CS-71.1 have been updated to reflect the changes implemented in 2022 Ky. Acts ch. 122.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Administrative Office of the Courts (Judges), 116, Private Attorneys 13,570 (2020 numbers), Child Support Attorneys and their staff, 542, and participants in the child support program, 503,593.

(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: Judges and staff will access the updated information to become familiar with the revised forms. Private attorneys will access the updated forms on the Child Support Enforcement Web site <https://kentuckychildsupport.com>, Child Support Attorneys and their staff will receive guidance from the Child Support Program regarding the revised forms and will also access them from the website listed above. Participants in the child support program can access the revised forms from the website above, or receive hard copy versions in their local child support office, this will affect new cases where a child support obligation is being determined, or cases when a participant has requested a review for a possible modification of their child support obligation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation will not increase accrued benefits to regulated entities but provides updated forms for determining an obligation.

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

(a) Initially: The amendment to this administrative regulation will be implemented with no allocated funds. There will be minimal costs associated with implementing the changes on our websites.

(b) On a continuing basis: The administrative regulation has no associated allocation of funding. Once updated on our websites, no additional costs are associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include state General Funds and Federal Funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities which elect to be regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 302 and 303, 42 U.S.C. 651-654, 656, 666, 667, 669B.

(2) State compliance standards. KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, 405.991, 406.021, and 454.220.

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 42 U.S.C. 654(4)(A), and 666(a)(10) and (c)(1).

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services and the Department for Income Support, Child Support Enforcement Program are impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 651 - 654, 656, 666(a)(10) and (c)(1), 667, and 669B. 45 C.F.R. 302 and 303. KRS 194A.050(1), 205.710, 205.712, 205.725, 205.735, 205.765, 205.792, 205.793, 205.795, 403.211, 403.212, 403.213, 405.430, 405.440, 405.450, 405.520, and 405.991.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 be implemented with no allocated funds. There will be minimal costs associated with implementing the changes on Child Support Enforcement program websites. 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 be implemented with no allocated funds. There will be minimal costs associated with implementing the changes on the Child Support Program's computer system and website. This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? No new or additional costs are necessary to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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? There are no cost savings associated with this administrative regulation.

(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 administrative regulation.

(c) How much will it cost the regulated entities for the first year? There are no cost associated with this administrative regulation.

(d) How much will it cost the regulated entities for subsequent years? There are no cost associated with this administrative regulation.

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

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 will not have a major economic impact.

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

922 KAR 1:350. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.

RELATES TO: KRS 2.015, 61.870-61.884, 194A.005(1), [194A.050(1),]194A.060, 199.011, [199.472(1),]202A.011(12), 258.015, 258.035, 311.720(12), 311.840(3), 314.011(5), (7), (9), 527.100, 527.110, 600.020, 605.090, [605.400(1),]610.110, 620.030, 620.050, 620.140(1)(d), 620.360, 620.363, Chapter 625, 16 C.F.R. 1219-1220, 1632-1633, 42 C.F.R. 435.407, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 1181, 42 U.S.C. 671, 672[~~-677~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472(1), 605.100(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of[~~Secretary for~~] the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 605.100(1) requires the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics. KRS 199.472(1) requires the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood. This administrative regulation establishes criteria for public agency foster homes, adoptive homes, and respite care providers caring for foster or adoptive children.

Section 1. Definitions. (1) "Adoptive home" means a home in which a parent is approved by the cabinet to provide services as specified in Section 2(12) of this administrative regulation.

(2) "Applicant" means an individual or family subject to approval by the cabinet as a foster or adoptive home.

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

(4) "Care Plus" means a foster care program for a child who is determined to have specialized care needs as specified in Section 5 of this administrative regulation.

(5) "Child" means:

(a) A child as defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(6) "Child specific foster home" means an individual or family subject to approval by the cabinet as a foster family home for a relative or fictive kin placement.

(7) "Child with medical complexity" means a child who has a medical condition in accordance with Section 4(1)(b) of this administrative regulation.

(8) "Commissioner" means commissioner of the Department for Community Based Services.

(9) "Department" means the Department for Community Based Services.

(10) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) and 600.020(30), if referring to a physical structure; or

(b) If referring to an individual, any individual approved as a foster parent by the cabinet to provide services as specified in Section 2(12) of this administrative regulation.

(11) "Health professional" means a person actively licensed as a:

(a) Physician as defined by KRS 311.720(12);

(b) Physician assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

(d) Registered nurse as defined by KRS 314.011(5) under the

supervision of a physician.

(12) "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker.

(13) "Independent living services" means services provided to an eligible child to assist the child in the transition from the dependency of childhood to living independently.

(14) "Placement" means the physical change in the location and living arrangement of a child in the custody of the cabinet removed from the child's home of origin.

(15) "Respite care" means temporary care provided by a provider, as specified in Section 17 of this administrative regulation, to meet the needs of the child or provide relief to the foster or adoptive parents with the expectation of a child's return to the current foster or adoptive home.

Section 2. General Requirements for a Foster or Adoptive Parent. (1)(a) Unless an exception is approved pursuant to paragraph (b) of this subsection by designated cabinet staff, a foster or adoptive parent applicant shall be at least twenty-one (21) years of age.

(b) A foster or adoptive parent applicant between eighteen (18) and twenty-one (21) years of age may be approved as a foster or adoptive parent if:

1. The foster or adoptive parent applicant is related to the child under the custodial control of the cabinet;

2. The foster or adoptive parent applicant can meet the needs of the child; and

3. Cabinet staff determines the placement is in the best interest of the child.

(2) A foster or adoptive parent applicant shall provide proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151, 8 U.S.C. 1181, and 42 C.F.R. 435.407.

(3) A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet if the commissioner approves the employee to adopt and the adoption is in the best interest of the child.

(4)(a) A department employee who provides protection and permanency services shall be approved as a respite care provider or foster parent for a child in the care and custody of the cabinet if prior approval by the commissioner or designee is granted in writing through the service region administrator in the region of employment.

(b) If approval is granted, the department shall:

1. Ensure the employee completes pre-service training outside the region of employment;

2. Assign a social services worker outside of the applicant employee's region of employment to complete the home study;

3. Maintain the case outside of the applicant employee's region of employment; and

4. Ensure that the employee shall not accept the placement of a child from within the region of employment unless:

a. The employee is related to the child; or

b. The employee is determined to be fictive kin as the result of a relationship developed outside of employment prior to the child being placed in the custody of the cabinet.

(5) A married couple may apply to become foster or adoptive parents.

(6) A single, unmarried person may apply to become a foster or adoptive parent.

(7) The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.

(8)(a) Each foster or adoptive applicant and adult member of the applicant's family shall submit a DPP-107, Health Information Required for Foster or Adoptive Parents, Applicants, or Adult Household Members, completed:

1. By a health professional who is not a member of the applicant's household, based upon health information within the past year, documenting:

a. The individual has no illness or condition that would present a health or safety risk to a child placed in the applicant's home, which may include a communicable disease; and

b. That there are no known health factors that would interfere

with the applicant's ability to become a foster or adoptive parent;

2. As part of:

- a. The initial application;
- b. The reevaluation; or

c. A foster or adoptive home review pursuant to Section 13 of this administrative regulation; and

3. By all household members in which the household member discloses mental health and substance abuse issues, including any history of drug or alcohol abuse or treatment.

(b) The department shall require further documentation or evaluation to determine the suitability of the home if there is an indicator of current or past mental health or substance abuse issues in a household member.

(9) Each foster or adoptive parent applicant shall submit a DPP-108, Health Information Required for Foster or Adoptive Parents or Applicants Regarding Dependent Children, for each child member of the applicant family.

(10) A foster or adoptive parent applicant shall have a source of income:

- (a) Sufficient to meet the applicant's household expenses; and
- (b) Separate from:

- 1. Foster care reimbursement; or
- 2. Adoption assistance.

(11) Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services, a foster or adoptive parent shall accept a child for foster care only from the cabinet.

(12) An approved foster or adoptive parent shall be willing to:

(a) Provide foster care services for a child placed in out-of-home care by the cabinet;

(b) Adopt a child:

- 1. Whose parent's parental rights have been terminated; and
- 2. Who is under the custodial control of the cabinet;

(c) Provide respite care for a child under the custodial control of the cabinet; or

(d) Provide any combination of the services described in paragraphs (a) through (c) of this subsection.

(13) A foster or adoptive applicant shall provide to the cabinet:

(a) 1. The names of three (3) personal references including:

- a. One (1) relative reference; and
- b. Two (2) non-relative references.

2. The references required by subparagraph 1. of this paragraph shall:

- a. Be interviewed by cabinet staff in person or by telephone; or
- b. Provide letters of reference for the applicant; and

(b) Two (2) credit references or a credit report.

(14) Unless a documented exception exists and is approved by designated cabinet staff due to inaccessibility, each adult child of the foster or adoptive parent applicant who does not live in the home shall be interviewed by cabinet staff in person or by telephone regarding the applicant's parenting history.

(15) If applicable, verification shall be obtained from the foster or adoptive parent applicant regarding:

- (a) Previous divorce;
- (b) Death of a spouse; and
- (c) Present marriage.

(16) A foster or adoptive parent applicant who does not have custody of his or her own child shall provide:

- (a) A copy of the visitation order, if applicable;
- (b) A copy of the child support order, if applicable; and
- (c) Proof of current payment of child support, if applicable.

(17) A foster or adoptive parent applicant and any member of the applicant's household shall submit to the background checks required by 922 KAR 1:490.

(18) The cabinet shall perform background checks in accordance with criteria established in 922 KAR 1:490.

Section 3. Home Environment. (1) The foster or adoptive parent shall request written approval from designated cabinet staff to provide services as a:

- (a) Certified provider of supports for community living in accordance with 907 KAR 12:010;
- (b) Certified family child care home in accordance with 922 KAR

2:100; or

(c) Provider of child-care center services in accordance with 922 KAR 2:090.

(2) If the foster or adoptive home adjoins a place of business open to the public, potential negative impact on the family and the child shall be examined including the:

- (a) Hours of operation;
- (b) Type of business; and
- (c) Clientele.

(3) The foster or adoptive parent shall have access to:

- (a) Reliable transportation;
- (b) School;
- (c) Recreation;
- (d) Medical care; and
- (e) Community facilities.

(4) A foster or adoptive parent who drives shall:

- (a) Possess a valid driver's license;
- (b) Possess proof of liability insurance; and
- (c) Abide by passenger restraint laws.

(5)(a) More than four (4) children, including the foster or adoptive parent's own children, shall not share a bedroom, with thorough consideration given to each child's age, gender, and background.

(b) Children of different genders over the age of five (5) shall not share a bedroom except as approved by designated department staff if:

1. Necessary to facilitate the placement of a sibling group or children who are related and share a sibling-like relationship, such as cousins; and

2. There are no high-risk behaviors.

(6) Each child shall have:

- (a) A separate bed that is age and size appropriate for the child;

or

(b) If the child is under age one (1), a crib that meets Consumer Products Safety Commission standards pursuant to 16 C.F.R. 1219-1220.

(7) A child's mattress shall:

(a) Meet current Consumer Products Safety Commission Standards in 16 C.F.R. Parts 1632 and 1633;

(b) Be in good repair; and

(c) Have a clean fitted sheet that shall be changed:

- 1. Weekly; or
- 2. Immediately if it is soiled or wet.

(8) Except as approved by designated cabinet staff, a foster or adoptive parent shall not share a bedroom with a child under the custodial control of the cabinet unless necessary due to the needs of the child.

(9) A bedroom used by a child under the custodial control of the cabinet shall be comparable to other bedrooms in the house.

(10) The physical condition of the foster or adoptive home shall:

- (a) Not present a hazard to the safety and health of a child;
- (b) Be well heated and ventilated;
- (c) Comply with state and local health requirements regarding water and sanitation;

(d) Provide access to indoor and outdoor recreation space appropriate to the developmental needs of a child placed in the foster or adoptive home;

- (e) Provide functioning kitchen facilities; and
- (f) Provide a functioning bathroom, including a:

- 1. Toilet;
- 2. Sink; and
- 3. Bathtub or shower.

(11) The following shall be inaccessible to a child:

(a) Medication, unless an exception is granted pursuant to subsection (12) of this section;

- (b) Alcoholic beverage;
- (c) Poisonous or cleaning material;
- (d) Ammunition; and
- (e) Firearms in accordance with KRS 527.100 and 527.110.

(12) An exception may be provided by designated cabinet staff to subsection (11)(a) of this section if:

- (a) 1. The child is approved by a health care professional to self-administer medicine under the supervision of the foster or adoptive parent; or

2. Emergency access to the medication may be necessary to save the child's life, such as in the case of severe allergic reaction or asthma attack; and

(b) Measures are taken to prevent unauthorized access by another child in the same home.

(13) Any household animal shall be vaccinated in accordance with KRS 258.015 and 258.035.

(14) A dangerous animal shall not be allowed near the child.

(15) First aid supplies shall be available and stored in a place easily accessible to an adult.

(16) A working telephone shall be accessible.

(17) The home shall be equipped with a working smoke alarm within ten (10) feet of each bedroom and on each floor of the home.

(18) A home with gas heating or appliances shall be equipped with a working carbon monoxide detector.

(19) Safety precautions related to an accessible swimming pool or body of water shall be documented, if applicable.

Section 4. Medically Complex Foster or Adoptive Home. (1) An applicant shall be approved by cabinet staff as a medically complex home if the foster or adoptive parent:

(a) Meets the requirements in Sections 2 and 3 of this administrative regulation, except for Section 2(10), which may be considered as an exclusion on a case-by-case basis by designated cabinet staff based on the best interests or needs of the child;

(b) Cares for a child in the custody of the cabinet who is determined to be medically complex by designated cabinet staff due to:

1. Significant medically oriented care needs related to a serious illness or condition diagnosed by a health professional that may become unstable or change abruptly, resulting in a life-threatening event;

2. A chronic condition that is expected to be life-long and progressive and to require extensive services;

3. An acute, time-limited condition requiring additional oversight; or

4. A severe disability that requires the routine use of medical devices or assistive technology to compensate for the loss of a vital body function needed to participate in activities of daily living and significant and sustained care to avert death or further disability;

(c) Is a primary caretaker who is not employed outside the home, except as approved by designated cabinet staff and based on the needs of the child;

(d) Completes training in accordance with 922 KAR 1:495, Section 4;

(e) Receives training with documentation of completion from a health professional or a previous caregiver that was trained by a health professional in how to care for the specific child with medical complexity who shall be placed in the foster or adoptive parent's care;

(f) Maintains current certification in:

1. Infant, child, and adult CPR; and

2. First aid; and

(g) Has a home within:

1. One (1) hour of a medical hospital with an emergency room; and

2. Thirty (30) minutes of a local medical facility.

(2) Except for a sibling group or unless approved by designated cabinet staff in accordance with Section 16 of this administrative regulation, more than four (4) children, including the foster or adoptive parent's own children, shall not reside in a medically complex foster or adoptive home.

(3) Unless an exception is approved pursuant to Section 16(2) of this administrative regulation and a medically complex foster or adoptive home has daily support staff to meet the needs of a child with medical complexity:

(a) A one (1) parent medically complex foster or adoptive home shall:

1. Not care for more than one (1) child with medical complexity;

and

2. Demonstrate access to available support services; and

(b) A two (2) parent medically complex foster or adoptive home shall:

1. Not care for more than two (2) children with medical complexity; and

2. Demonstrate access to available support services.

(4) Unless an exception pursuant to Section 16(2) of this administrative regulation is approved, a child with medical complexity shall be placed in an approved medically complex foster or adoptive home.

(5) Unless the home is closed pursuant to Section 14 of this administrative regulation, an approved medically complex foster or adoptive parent shall receive reapproval by the cabinet as a medically complex home if the parent:

(a) Annually completes training specified in 922 KAR 1:495, Section 4; and

(b) Continues to meet the requirements of this section.

(6) An approved medically complex foster or adoptive parent shall cooperate in carrying out the child's health plan.

Section 5. Care Plus Home. (1) An applicant shall be approved by cabinet staff as a care plus parent if the foster or adoptive parent:

(a) Meets the requirements of Sections 2 and 3 of this administrative regulation, except for Section 2(10) which may be considered as an exclusion on a case-by-case basis by designated cabinet staff based on the best interests or needs of the child;

(b) Agrees to care for a child in the custody of the cabinet approved by cabinet staff as a care plus child because the child:

1. Has a diagnosed emotional or behavioral problem;

2. Is due to be released from a treatment facility;

3. Displays aggressive, destructive, or disruptive behavior;

4. Is at risk of being placed in a more restrictive setting;

5. Is at risk of institutionalization; or

6. Has experienced numerous placement failures;

(c) Is a primary caretaker who is not employed outside the home, unless the cabinet determines that the child's needs continue to be met;

(d) Completes training in accordance with 922 KAR 1:495, Section 6;

(e) Agrees to maintain a weekly record of the care plus child's activities and behaviors; and

(f) Agrees to attend case planning conferences.

(2) Unless an exception is approved pursuant to Section 16(2) of this administrative regulation and the care plus home parent can demonstrate access to available support services:

(a) No more than four (4) children, including the foster or adoptive parent's own children, shall reside in a care plus home;

(b) A one (1) parent care plus home shall not care for more than one (1) care plus child as described in subsection (1)(b) of this section; and

(c) A two (2) parent care plus home shall not care for more than two (2) care plus children as described in subsection (1)(b) of this section.

(3) Unless the home is closed pursuant to Section 14 of this administrative regulation, an approved care plus foster or adoptive parent shall receive reapproval by the cabinet as a care plus home, if the parent:

(a) Annually completes training in accordance with 922 KAR 1:495, Section 6;

(b) Submits to a review of the parent's:

1. Strengths and needs;

2. Records maintained on services provided to the child; and

3. Ability to meet the goals established for the child; and

(c) Continues to meet the requirements of this section.

Section 6. Preparation and Selection of a Foster or Adoptive Home. (1) The cabinet shall recruit a foster or adoptive home and approve the home prior to the placement of a child, except in the case of a child specific placement with a relative or fictive kin caregiver.

(2) Upon recruitment of a foster home, the cabinet shall register the foster home in the foster care registry.

(3) Prior to approval as a foster or adoptive parent, the cabinet shall check the foster care registry for information relating to a previous closure or corrective action.

(4) If an applicant previously approved to foster or adopt by a

child-placing agency or the cabinet was:

(a) Closed pursuant to 922 KAR 1:310 or Section 14 of this administrative regulation, the home shall be reviewed by the cabinet and may be reopened and operated as a cabinet foster home; or

(b) Under a corrective action plan issued by a child-placing agency or the cabinet prior to closure, the cabinet shall review and approve the home study prior to the home being reopened.

(5) Prior to approval as a foster or adoptive parent, an applicant shall complete training requirements in accordance with 922 KAR 1:495.

(6)(3) If a new adult moves into an approved foster or adoptive home where a child is already placed by the cabinet, the child may remain and additional children may be placed if the new adult:

(a) Completes training in accordance with subsection (5)(2) of this section within six (6) months of entering the home; and

(b) Meets the requirements specified in Sections 2 and 3 of this administrative regulation.

(7)(4) An adult child or incapacitated person who resides in the foster or adoptive home shall not be required to complete training in accordance with 922 KAR 1:495 if that individual shall not be responsible for routine daily care of a child placed in the home by the cabinet.

(8)(5) The cabinet shall not be obligated to grant foster or adoptive home approval or placement of a specific child to an individual or family that completes pre-service training.

(9)(6) In addition to completion of training in accordance with 922 KAR 1:495, at least two (2) family consultations shall be conducted by cabinet staff in the home of an applicant, to include:

(a) Documentation that the requirements in Sections 2 and 3 of this administrative regulation have been met;

(b) Documentation that a personal interview with each member of the applicant's household has been completed;

(c) Discussion of the attitude of each member of the applicant's household toward placement of a child;

(d) Observation of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction; and

(e) Assurance that the applicant is willing to accept a child's relationship with the child's family of origin.

(10)(7) An applicant approved as a foster or adoptive parent or respite care provider by another state or by a child-placing agency as defined in KRS 199.011(6) shall:

(a) Meet the requirements provided within Sections 2 and 3 of this administrative regulation;

(b) Be assessed by cabinet staff to ascertain the applicant's level of skill as a potential Kentucky foster or adoptive parent;

(c) Provide verification of the closure and a statement to indicate whether the closure was at the request of the foster or adoptive parent, the other state, or the agency; and

(d) Not be required to complete training in accordance with 922 KAR 1:495 for approval as a Kentucky foster or adoptive parent if cabinet staff:

1. Determine that the applicant possesses the necessary skills for fostering; and

2. Obtain records and recommendation from the other state or child-placing agency.

(11)(8) Following initial training as specified in 922 KAR 1:495, if cabinet staff determines that an applicant or adult household member lacks the necessary skills to become a foster or adoptive parent, an individualized training curriculum shall be developed to fulfill unmet training needs.

(12)(9)(a) A foster or adoptive parent shall request the recommendation of cabinet staff prior to enrolling in training specified in 922 KAR 1:495, Section 4(1) or 6(1); and

(b) Cabinet staff may recommend the foster or adoptive parent to receive training specified in 922 KAR 1:495, Section 4(1) or 6(1), if the parent possesses the aptitude to care for a child described in Section 4(1)(b) or 5(1)(b) of this administrative regulation.

Section 7. Completion of the Foster or Adoptive Approval Process. (1) Designated cabinet staff in a supervisory role shall approve a foster or adoptive applicant if:

(a) The applicant provides written and signed information pertaining to family history and background;

(b) The applicant completes training requirements as required by 922 KAR 1:495;

(c) The information required in Section 2(8) through (10) and (13) through (17) of this administrative regulation has been obtained, unless a waiver has been granted for a child specific placement with a relative or fictive kin caregiver;

(d) Background checks have been completed pursuant to 922 KAR 1:490 and did not result in a disqualifying background check result;

(e) Designated cabinet staff recommends approval; and

(f)(e) The applicant's ability to provide a foster, adoptive, or respite care service is consistent with the:

1. Cabinet's minimum foster or adoptive home requirements established in this administrative regulation; and

2. Needs of the families and children served by the cabinet.

(2) If the designated cabinet staff determines that an applicant does not meet the minimum requirements for approval as a foster or adoptive parent, the cabinet shall:

(a)1. Recommend [recommend] that the applicant withdraw the application; or

2. Deny the application pursuant to Section 8 of this administrative regulation; and

(b) Document the recommendation or denial in the foster care registry [request].

Section 8. Denial of a Foster or Adoptive Home Application [Request]. (1) Designated cabinet staff shall notify an applicant, in writing, if the application [request] to become a foster or adoptive parent is not recommended or denied for one (1) of the following reasons:

(a) The applicant is unwilling to withdraw the application [request] to become a foster or adoptive parent after receiving a recommendation to withdraw; or

(b) The applicant desires to adopt, but is unwilling to adopt a child under the custodial control of the cabinet.

(2) If the foster or adoptive applicant disagrees with the cabinet's recommendation to not accept the applicant as a foster or adoptive home or denial, designated cabinet staff shall review the application [request] to become a foster or adoptive parent and issue a final written determination regarding the cabinet's recommendation or denial.

(3) Cabinet staff shall enter information regarding the recommendation, denial, and final determination, if written, into the foster care registry.

Section 9. Expectations of a Foster or Adoptive Home. A foster or adoptive home providing services for a child in the custody of the cabinet shall:

(1) Provide a child placed by the cabinet with a family life, including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(c) Affection;

(d) Life skills development;

(e) Recreational opportunities;

(f) Educational opportunities;

(g) Nonmedical transportation;

(h) Independent living services for a child age fourteen (14) [twelve (12)] and older;

(i) Opportunities for development consistent with their religious, ethnic, and cultural heritage;

(j) Adequate supervision; and

(k) Refraining from smoking in the direct presence of a child for whom the child's physician recommends, in writing, a smoke-free environment.

(2) Permit cabinet staff to visit;

(3) Share with cabinet staff pertinent information about a child placed by the cabinet;

(4) Comply with the general supervision and direction of the cabinet concerning the care of a child placed by the cabinet;

(5) Report immediately to the cabinet if there is a:

(a) Change of address;

(b) Hospitalization or life-threatening accident or illness of a child placed by the cabinet;

(c) Change in the number of people living in the home;

(d) Significant change in circumstances in the foster or adoptive home, such as income loss, marital separation, or other household stressor;

(e) Child placed in the home that is absent without official leave;

(f) Suicide attempt of a child placed by the cabinet; or

(g) Criminal activity by the child placed by the cabinet;

(6) Notify the cabinet if:

(a) Leaving the state with a child placed by the cabinet for more than twenty-four (24) hours; or

(b) A child placed by the cabinet is to be absent from the foster or adoptive home for more than twenty-four (24) hours;

(7) Cooperate with the cabinet if a contact is arranged by cabinet staff between a child placed by the cabinet and the child's birth family including:

(a) Visits;

(b) Telephone calls; or

(c) Mail;

(8) Surrender a child to the authorized representative of the cabinet upon request;

(9) Keep confidential all personal or protected health information as shared by the cabinet, in accordance with KRS 194A.060, 620.050, and 45 C.F.R. Parts 160 and 164 concerning a child placed by the cabinet or the child's birth family;

(10) Support an assessment of the service needs of a child placed by the cabinet;

(11) Participate in case-planning conferences concerning a child placed by the cabinet;

(12) Cooperate with the implementation of the permanency goal established for a child placed by the cabinet;

(13) Notify the cabinet at least fourteen (14) calendar days in advance of the home's intent to become certified to provide foster care or adoption services through a private child-placing agency in accordance with 922 KAR 1:310;

(14) Treat a child placed by the cabinet with dignity;

(15) Arrange for respite care services in accordance with Section 10(5) of this administrative regulation;

(16) Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;

(17) Facilitate the delivery of medical care to a child placed by the cabinet as needed, including:

(a) Administration of medication to the child and daily documentation of the medication's administration; and

(b) Physicals and examinations for the child;

(18) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030;

(19) Comply with KRS 620.360(2);

(20) Be informed of and comply with KRS 620.363;

(21) Have appeal rights in accordance with 922 KAR 1:320; and

(22)[(24)] Demonstrate functional literacy.

Section 10. Reimbursements for Foster Homes. (1) Types of per diem reimbursement. The cabinet shall approve a foster home as specified in Sections 2 and 3 of this administrative regulation and authorize a per diem reimbursement as established in this subsection.

(a) A child specific per diem reimbursement shall be made to a foster home that:

1. Has been approved pursuant to Section 7 of this administrative regulation; and

2. Meets initial training requirements for a child specific foster home.

(b) A basic per diem reimbursement shall be:

1. Based on the age of a child placed by the cabinet in the foster home; and

2. Made to the foster home that meets annual training requirements in accordance with 922 KAR 1:495, Section 3.

(c) An advanced per diem reimbursement shall be:

1. Made to a foster home that has:

a. Been approved for two (2) years as a foster or adoptive parent; and

b. Met training requirements in accordance with 922 KAR 1:495, Section 3; and

2. Based on the age of the child placed by the cabinet.

(d) A basic medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 4 of this administrative regulation; and

2. Provides for the care of a child with medical complexity.

(e) An advanced medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 4 of this administrative regulation;

2. Has been approved for one (1) year[two (2) years] as a medically complex foster or adoptive parent;

3. Has met training requirements in accordance with KRS 922 KAR 1:495, Section 3; and

4. Provides for the care of a child with medical complexity.

(f) A degreed medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 4 of this administrative regulation;

2. Maintains a current license as a health professional; and

3. Provides for the care of a child with medical complexity.

(g) A basic care plus foster home per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 5 of this administrative regulation; and

2. Provides for the care of a child described in Section 5(1)(b) of this administrative regulation.

(h) An advanced care plus foster home per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 5 of this administrative regulation;

2. Has been approved for one (1) year[two (2) years] as a care plus foster or adoptive parent;

3. Has met training requirements in accordance with 922 KAR 1:495, Section 3(1); and

4. Provides for the care of a child described in Section 5(1)(b) of this administrative regulation.

(i) A specialized medically complex per diem reimbursement shall be made to a foster parent who:

1. Meets criteria specified in Section 4 of this administrative regulation; and

2. Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition.

(j) A degreed specialized medically complex per diem reimbursement shall be made to a foster parent who:

1. Maintains a current license as a health professional;

2. Meets criteria specified in Section 4 of this administrative regulation; and

3. Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition.

(k) Upon placement of a child by the cabinet, a per diem reimbursement shall:

1. Be specified in a contract between an approved foster home and the cabinet; and

2. Provide for the care of a child placed by the cabinet, to include:

a. Housing expenses;

b. Food-related expenses;

c. Nonmedical transportation;

d. Clothing;

e. Allowance;

f. Incidentals;

g. Babysitting, excluding childcare authorized in subsection (4)(b) of this section;

h. Sports, recreation, and school activities;

- i. One (1) day of respite care per child per month; and
- j. School expenses.

(2) Medical coverage.

(a) Cabinet staff may authorize payment for medical expenses for a child in the custody of the cabinet after verification is provided that the child is not covered by health insurance, Medicaid, or the Kentucky Children's Health Insurance Program (K-CHIP).

(b) Designated cabinet staff shall approve or deny authorization of payment for a medical treatment greater than \$500.

(3) Child care services.

(a) The cabinet shall review requests for child care services every six (6) months for a working foster parent.

(b) Designated cabinet staff may approve requests for child care services for a nonworking foster parent if:

- 1. A medical crisis affects the foster parent; or
- 2. The child care is appropriate to support the foster home or child.

(c) Designated cabinet staff shall review approved requests for child care services for a nonworking foster parent every three (3) months.

(d) Reimbursements shall not be made simultaneously to the same provider for foster care and child care services.

(e) A foster parent shall not simultaneously be used as a licensed or certified health care or social service provider for a child placed in the foster parent's care by the cabinet.

(4) Training. To the extent funds are available, the cabinet shall provide a reimbursement to an approved foster or adoptive home for ongoing training expenses commensurate with the foster or adoptive parent's training needs, including:

- (a) Mileage;
- (b) Babysitting; and
- (c) Tuition or fees up to the amount of:
 - 1. \$100 per parent per year; or
 - 2. \$200 per parent per year for a:
 - a. Medically complex foster or adoptive home; or
 - b. Care plus foster or adoptive home.
- (5) Respite care.

(a) Respite care shall be available for a child placed by the cabinet in a foster home.

(b) A foster home shall be eligible for one (1) day of respite care per month per child.

(c) A foster home that cares for a child in the custody of the cabinet and meets criteria established in Sections 4 and 5 of this administrative regulation shall be eligible for three (3) days of respite care per month per child.

(d) Designated cabinet staff may extend a foster parent's respite care use to fourteen (14) days if designated cabinet staff document that the:

- 1. Foster parent requires the additional respite care:
 - a. To stabilize the child's placement in the foster home; or
 - b. Due to unforeseen circumstances that may occur, such as:
 - (i) Death in the family;
 - (ii) Surgery; or
 - (iii) Illness; or
- 2. Child placed in the foster home requires additional respite care to allow for a period of adjustment.

(e) The cost of respite care shall not exceed the per diem for the child.

(f) A respite care provider shall be approved in accordance with Section 17 of this administrative regulation.

(6) Appeals. A foster or adoptive parent may appeal the timeliness of reimbursement in accordance with 922 KAR 1:320.

Section 11. Home Study Requests. (1) Upon receipt of a request from another state's Interstate Compact on the Placement of Children Administrator in the interest of a child in the legal custody of that state's public agency, the cabinet shall complete the foster or adoptive home approval process as specified in Section 7 of this administrative regulation.

(2) The cabinet shall share a previously approved home study in accordance with the Kentucky Open Records Act, KRS 61.870-61.884, and 42 U.S.C. 671(a)(23).

(3) An individual may request an administrative hearing in

accordance with 922 KAR 1:320 for failure of the cabinet to act in accordance with subsections (1) and (2) of this section.

Section 12. Foster or Adoptive Home Reevaluation. (1) Prior to or during the month of the anniversary date of the initial approval as a foster or adoptive parent, the foster or adoptive parent shall be required to complete annual training requirements as specified in 922 KAR 1:495.

(2)(a) Failure to meet training requirements specified in subsection (1) of this section shall lead to closure unless an exception is granted by the designated cabinet staff for a foster parent caring for a child in the custody of the cabinet and it is determined that it is in the best interest of a child placed in the foster home.

(b) If an exception is approved as specified in paragraph (a) of this subsection, a new or additional child shall not be placed in the home until the foster parent has met the training requirement.

(3) A cabinet staff member shall conduct a personal, in-home interview with a foster or adoptive parent prior to or during the month of the anniversary date of the third year of the initial approval as a foster or adoptive home. The interviewer shall assess:

- (a) Any change in the foster or adoptive home;
- (b) The ability of the foster or adoptive home parent to meet the needs of a child placed in the home; and
- (c) Continuing compliance with the requirements of Sections 2 and 3 of this administrative regulation.

(4) The cabinet staff member shall document requirements of subsection (3) of this section to include:

- (a) A list of persons residing in or frequently in the home since the initial approval or reevaluation;
- (b) A list of all foster children placed in the home since the initial approval or reevaluation and exit reasons for the children no longer in the home;
- (c) Use of formal and informal support systems including:
 - 1. Respite;
 - 2. Extended family support; and
 - 3. Friends or community partners;
- (d) Description of parenting and discipline strategies;
- (e) Changes in the physical environment including:
 - 1. Address change; and
 - 2. School district change;
- (f) Discussion of stressors within the home to include:
 - 1. Pregnancy or birth;
 - 2. Physical or mental health conditions;
 - 3. Employment changes;
 - 4. Financial changes;
 - 5. Death, grief, or loss;
 - 6. Childhood trauma; and
 - 7. Divorce or personal relationship changes;
- (g) Alcohol or drug use and any substance abuse treatment;
- (h) Functioning of relationships within the household;
- (i) Assessment of the family's ability to meet the needs of the children placed in the home;
- (j) List of foster or adoptive home reviews;
- (k) Areas of concern or actions to be addressed that may exist within the household; and
- (l) Placement recommendations.

(c) Use of formal and informal support systems including:

- 1. Respite;
- 2. Extended family support; and
- 3. Friends or community partners;
- (d) Description of parenting and discipline strategies;
- (e) Changes in the physical environment including:

- 1. Address change; and
- 2. School district change;

- (f) Discussion of stressors within the home to include:
- 1. Pregnancy or birth;
- 2. Physical or mental health conditions;
- 3. Employment changes;
- 4. Financial changes;
- 5. Death, grief, or loss;
- 6. Childhood trauma; and
- 7. Divorce or personal relationship changes;

- (g) Alcohol or drug use and any substance abuse treatment;
- (h) Functioning of relationships within the household;
- (i) Assessment of the family's ability to meet the needs of the children placed in the home;
- (j) List of foster or adoptive home reviews;
- (k) Areas of concern or actions to be addressed that may exist within the household; and
- (l) Placement recommendations.

- (g) Alcohol or drug use and any substance abuse treatment;
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- (l) Placement recommendations.

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- (l) Placement recommendations.

- (g) Alcohol or drug use and any substance abuse treatment;
- (h) Functioning of relationships within the household;
- (i) Assessment of the family's ability to meet the needs of the children placed in the home;
- (j) List of foster or adoptive home reviews;
- (k) Areas of concern or actions to be addressed that may exist within the household; and
- (l) Placement recommendations.

- (d) Sudden, substantial decrease in, or loss of, income;
 - (e) Childbirth;
 - (f) Use of a form of punishment that includes:
 1. Cruel, severe, or humiliating actions;
 2. Corporal punishment inflicted in any manner;
 3. Denial of food, clothing, or shelter;
 4. Withholding implementation of the child's treatment plan;
 5. Denial of visits, telephone, or mail contacts with family members, unless authorized by a court of competent jurisdiction; and
 6. Assignment of extremely strenuous exercise or work;
 - (g) A report of abuse, neglect, or dependency that results in a finding that:
 1. Is substantiated; or
 2. Reveals concern relating to the health, safety, and well-being of the child;
 - (h) If the foster or adoptive parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense;
 - (i) Other factor identified by cabinet staff that jeopardizes the physical, mental, or emotional well-being of the child; or
 - (j) Failure to meet annual training requirements.
- (3) The narrative of the review shall contain:
- (a) Identifying information;
 - (b) Current composition of the household;
 - (c) Description of the situation that initiated the review;
 - (d) An evaluation of the foster or adoptive home's family functioning to determine if the child's needs are met; and
 - (e) A plan for corrective action that may include a recommendation for closure of the foster or adoptive home.

Section 14. Closure of an Approved Foster or Adoptive Home.

- (1) A foster or adoptive home shall be closed if:
 - (a) Cabinet staff determines that the family does not meet the general requirements, as specified in Sections 2 and 3 of this administrative regulation, for a foster or adoptive home;
 - (b) A situation exists that is not in the best interest of a child;
 - (c) Sexual abuse or exploitation by the foster or adoptive parent or by another resident of the household is substantiated;
 - (d) Substantiated child abuse or neglect by a resident of the household occurs that is serious in nature or warrants removal of a child;
 - (e) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the foster or adoptive parent; or
 - (f) The cabinet has not placed a child in the home within the preceding twelve (12) months, unless a written exception is provided by the service region administrator or designee[two (2)-year-period].
- (2) A foster or adoptive home may be closed according to the terms of the contract between the cabinet and the foster or adoptive home.
- (3) If it is necessary to close an approved foster or adoptive home, the reason shall be stated by cabinet staff in a personal interview with the family, unless the family refuses or declines the personal interview.
- (4) The cabinet shall:
 - (a) Confirm, in a written notice to the foster or adoptive parent, the decision to close a home:~~[-and]~~
 - (b) Deliver the notice to the foster or adoptive home within fourteen (14) calendar days of the interview with a foster or adoptive parent; and
 - (c) Submit closure information, including the cause for closure pursuant to subsection (1) of this section, in the foster care registry.
- (5) The written notice for closure of a foster or adoptive home shall include:
 - (a) Notice that the cabinet shall not place a child in the home; and
 - (b) The reason why the foster or adoptive home is being closed.

Section 15. Reapplication. (1) A former foster or adoptive home parent whose home was closed pursuant to Section 14(1)(a) through (f) of this administrative regulation may be considered for reapproval if the cause of closure has been resolved.

- (2) To reapply, a former foster or adoptive parent shall:

- (a) Attend an informational meeting; and
 - (b) Submit the:
 1. Names of references specified in Section 2(13) of this administrative regulation; and
 2. Authorization for criminal records release specified in Section 2(17) of this administrative regulation.
 - (3) A reapplying former foster or adoptive parent shall reenroll and complete training requirements, as specified in Section 6 of this administrative regulation, unless:
 - (a) The former foster or adoptive parent has previously completed training requirements, as specified in Section 6(2) of this administrative regulation; and
 - (b) An exception to reenrollment is provided by designated cabinet staff that [which] have ascertained that the former foster or adoptive parent otherwise meets the necessary skill level.
- Section 16. Placement Considerations. (1) Unless an exception is approved pursuant to subsections (2) or (3) of this section because a placement is in the best interest of the child and specific support services shall be provided, the requirements established by this subsection shall apply to foster homes.
- (a) More than six (6) children, including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall not reside in a foster home.
 - (b) More than two (2) children under age two (2), including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall not reside in a foster home.
 - (c) A child with medical complexity shall be placed in an approved medically complex home.
 - (2) To request an exception to the criteria established by subsection (1) of this section, cabinet staff shall submit the DPP-112A, DCBS Placement Exception Request, to designated cabinet staff prior to the proposed placement documenting:
 - (a) The reason the placement is in the best interest of the child; and
 - (b) Specific support services to be provided.
 - (3) The number of foster children residing in a foster family home may exceed the limitation established in subsection (1)(a) of this section with documentation on the DPP-112A in order to allow:
 - (a) A parenting youth in foster care to remain with the child of the parenting youth;
 - (b) Siblings to remain together;
 - (c) A child with an established meaningful relationship with the family to remain with the family;
 - (d) A family with special training or skills to provide care to a child who has a severe disability; or
 - (e) Other circumstances noted in the DPP-112A and approved by the service region administrator or designee.
 - (4) If an exception to subsection (1) or (2) of this section is necessary for a placement to occur outside of normal business hours:
 - (a) Cabinet staff shall verbally provide all information contained within the DPP-112A to designated cabinet staff prior to the placement;
 - (b) A verbal approval from designated cabinet staff shall be required prior to the placement occurring; and
 - (c) The completed DPP-112A shall be submitted on the first business day following placement.
 - (5) Cabinet staff shall inform the foster parent of conditions related to the child in accordance with:
 - (a) KRS 605.090(1)(b); and
 - (b) KRS 605.090(6).
 - (6) Cabinet staff shall place a child with higher level needs in an advanced level home or above if a relative or fictive kin placement has not been identified.
 - (7) A foster or adoptive parent may adopt a child for whom parental rights have been terminated if:
 - (a) Foster or adoptive parent adoption is determined by cabinet staff to be in the best interest of the child;
 - (b) The child resides in the foster or adoptive home; and
 - (c) Criteria in 922 KAR 1:100 are met.
 - (8) If a foster or adoptive parent expresses interest in adopting a foster child currently placed in the home and an alternative

permanent placement is in the child's best interest, cabinet staff shall meet with the foster or adoptive parent prior to selection of an adoptive home to explain:

- (a) Why an alternative permanent placement is in the child's best interest; and
- (b) The foster or adoptive parent's right to submit a request to the cabinet to reconsider the recommendation.

Section 17. Requirements for Respite Care Providers. (1) A respite care provider shall:

- (a) Be:
 - 1. An approved foster or adoptive home; or
 - 2. Approved in accordance with subsection (2) of this section; and
- (b) Receive preparation for placement of a child, including information in accordance with:
 - 1. KRS 605.090(1)(b); and
 - 2. Section 4(1)(e) through (g) of this administrative regulation, if the child is designated as medically complex.
- (2) If a foster or adoptive parent chooses a respite care provider who is not an approved foster or adoptive home, the respite care provider shall:
 - (a) 1. Meet criteria established in Sections 2(1), (2), (17), (18) and 3 of this administrative regulation if respite care is provided outside the home of the foster or adoptive parent; or
 - 2. Meet criteria established in Section 2(1), (2), (17), and (18) of this administrative regulation if respite care is provided inside the home of the foster or adoptive parent; and
 - (b) 1. If providing respite care for a child described in Section 5(1)(b) of this administrative regulation, have:
 - a. Child-specific training in the mental health treatment of children or their families; or
 - b. A certificate of completion for twelve (12) hours of care plus training specified in 922 KAR 1:495, Section 6(1); or
 - 2. If providing respite care for a child with medical complexity or specialized medical complexity:
 - a. Meet training requirements in accordance with 922 KAR 1:495, Section 7;
 - b. Hold a current certificate in first aid;
 - c. Hold a current certificate in infant, child, and adult CPR; and
 - d. Receive child specific training from a health professional or a foster parent who has been trained by a health professional in how to care for the specific medical needs of the child.
 - (3) A respite care provider:
 - (a) May attend pre-service training as specified in Section 6 of this administrative regulation; and
 - (b) Shall comply with Sections 16 and 17 of this administrative regulation.

Section 18. Waiver Review Process. (1) The department may waive requirements for a relative or fictive kin seeking approval as a child specific foster home if the removal of those requirements does not jeopardize the health, safety, or welfare of the child being placed.

(2) The department shall not grant a waiver to the requirements established in the following sections of this administrative regulation:

- (a) Section 2, subsections (1)(a) through (7), (10) through (12), (16) through (18); or
- (b) Section 3, subsections (1) through (5), (6)(b), (7) through (10)(c), (10)(e) through (10)(f), (11) through (18).

(3) An applicant may request a waiver of non-safety standards. A representative of the department shall submit a written request that states the:

- (a) Specific provision(s) for which a waiver is requested; and
- (b) Justification for the requested waiver.

(4) A child specific foster home that seeks approval as a basic foster home or higher level shall complete all prior waived training and meet the requirements established in Sections 2 and 3 of this administrative regulation.

Section 19. Emergency Preparedness. Each foster home shall submit an emergency preparedness plan to the department that would allow the department to identify, locate, and ensure continuity of services to children who are in the custody of the cabinet.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "DPP-107, Health Information Required for Foster or Adoptive Parents, Applicants, or Adult Household Members", 10/15;
- (b) "DPP-108, Health Information Required for Foster or Adoptive Parents or Applicants Regarding Dependent Children", 10/15; and
- (c) "DPP-112A, DCBS Placement Exception Request", 07/22[4/19].

(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: June 28, 2022

FILED WITH LRC: July 11, 2022 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 26, 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 September 19, 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 September 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: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for public agency foster homes, adoptive homes, and respite care providers caring for foster or adoptive children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for public agency foster parents, adoptive parents, and respite care providers who care for children in the custody of the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1), 199.472(1), and 605.100(1) require the cabinet to promulgate administrative regulations necessary to operate programs to fulfill the responsibilities vested in the cabinet; arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective needs; and promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing criteria for public agency foster parents, adoptive parents, and respite care providers.

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

regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes requirements related to the foster home registry that were passed in House Bill 312 of the 2020 Regular Session and codified in KRS 199.660. The foster home registry is already in operation, but this administrative regulation is being updated for consistency with statute and other regulatory actions. The amendment includes actions that must be taken by cabinet staff related to foster homes that are or have been closed for cause or put under corrective action. Inactive foster homes will remain open for twelve months rather than two (2) years unless an exception is permitted in order to provide the cabinet with more accurate data relating to available foster placement homes and options. Amendment to this administrative regulation was also necessary to provide consistency with amendments being made to 922 KAR 1:340 relating to independent living programs and services. Incorporated material, the DPP-112A, is being amended to include the proposed or actual placement date, and request information relating to family strengths and supports, transportation, and children with medical complexity.

(b) The necessity of the amendment to this administrative regulation: This amendment includes processes and requirements for cabinet staff relating to the foster care registry that were required by legislation that passed in 2020 and have been adopted into policy. This amendment also makes updates consistent with other regulatory amendments in process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the cabinet to promulgate, administer, and enforce programs mandated by federal law or to qualify for the receipt of federal funds. KRS 199.472(1) requires the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that cabinet staff are meeting state and federal requirements related to public foster and adoptive homes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 1, 2022, there were 8,760 children placed in out-of-home care in the commonwealth. 2,947 of those children were placed in cabinet foster homes regulated 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: This amendment adds requirements on cabinet staff relating to the foster care registry, there are no new requirements for foster homes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment does not negatively or positively impact foster or adoptive homes.

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

(a) Initially: Staff are already meeting the additional administrative requirements required by this amendment. There are no costs associated with this amendment.

(b) On a continuing basis: Staff are already meeting the additional administrative requirements required by this amendment. There are no costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administration of this program is partially reimbursable with federal Title IV-E dollars of the Social Security Act and otherwise funded by 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 no increase in fees or funding associated with this amendment.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671

(2) State compliance standards. KRS 194A.050(1), 199.472(1), 605.100(1)

(3) Minimum or uniform standards contained in the federal mandate. 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472(1), 605.100(1), 16 C.F.R. 1219-1220, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 42 U.S.C. 671

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

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

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

(c) How much will it cost to administer this program for the first year? In SFY 2020, Kentucky spent approximately \$400,000,000 on expenditures related to caring for children in the cabinet's custody. There are no costs associated with this specific amendment.

(d) How much will it cost to administer this program for subsequent years? Expenditures related to the cost of caring for children in the cabinet's custody have decreased as child welfare prevention services have increased since implementing the Family First Prevention Services Act. There are no costs associated with this specific 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:

(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 include cost savings for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

(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.

Revenues (+/-):

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 to regulated entities.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)**

922 KAR 2:160. Child Care Assistance Program.

RELATES TO: KRS 194A.060, 199.894(1), (5), 199.896, 199.898(1), (2), 199.8982, 199.899, 214.036, 314.011(5), 337.275, 600.020, 605.120(5), 620.020(10), 7 C.F.R. Part 1463, 20 C.F.R. Parts 676-678, 34 C.F.R. Part 361, Part 463, 45 C.F.R. Part 98, 205.10(a)(6), 205.50(a)(1)(i), 400.66(d), 7 U.S.C. 2012, 25 U.S.C. 1261, 1401, 5501, 29 U.S.C. 723(a)(5), 34 U.S.C. 20102(c), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1395w-141, 1771-1793, 2000d, 3001, 4950-5085, 8621, 9857-9858q, 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to promulgate administrative regulations to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 9857-9858q, and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner that is in the best interest of the clients to be served. This administrative regulation establishes requirements that enable the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis who is applying for CCAP.

(2) "Cabinet" is defined by KRS 199.894(1).

(3) "Change in a circumstance" means a change that may affect eligibility or benefit amounts, such as:

- (a) Beginning or ending employment;
- (b) Change in an employer or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in family members;
- (f) Change in self-employment activity;
- (g) Change in scheduled hours care is needed;
- (h) Beginning or ending an educational activity;
- (i) Change in child care provider;
- (j) Change in address or residence;
- (k) Change in marital status;
- (l) Beginning or ending receipt of unearned income; or
- (m) Enrollment in a certified trade school or an accredited college or university.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child Care and Development Fund" or "CCDF" is defined by 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined by 45 C.F.R. 98.2.

(8) "Child protective services" is defined by 922 KAR 1:330, Section 1(5).

(9) "Child with a special need" means a child who has multiple or severe functional needs requiring ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for compensation or as an unpaid job requirement.

(11) "Family" means an applicant or parent, a child, and another responsible adult if present, residing in the same home.

(12) "Family child-care home" is defined by KRS 199.894(5).

(13) "Full day" means child care that is provided for five (5) or more hours per day.

(14) "Good academic standing" means a student is meeting the trade school, college, or university's requirements for attendance and satisfactory progress towards the completion of coursework.

(15) "Health professional" means a person actively licensed as a:

- (a) Physician;
- (b) Physician assistant;
- (c) Advanced practice registered nurse;
- (d) Qualified mental health professional as defined by KRS 600.020(52); or

(e) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician.

(16) "Homeless" means an individual or a family lacking a fixed, regular, and adequate nighttime residence, including a child experiencing homelessness as defined by 45 C.F.R. 98.2.

(17) "In loco parentis" means a person acting in place of a parent, including:

- (a) A legal guardian;
- (b) An individual related by blood, marriage, or adoption to the child; or

(c) A nonrelative pursuing legal custody of the child within one (1) year of application.

(18) "Infant" means a child who is less than one (1) year old.

(19) "Kentucky Transitional Assistance Program" or "KTAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(20) "Parent" is defined by 45 C.F.R. 98.2.

(21) "Part day" means child care that is provided for less than five (5) hours per day.

(22) "Preschool child" means a child who has reached the third birthday up to, but not including, the sixth birthday.

(23) "Preventive services" is defined by KRS 620.020(12).

(24) "Provider" means the entity providing child care services, such as:

- (a) A member of a limited liability corporation (LLC);

- (b) The head of an organization;
- (c) An owner of a corporation;
- (d) A member of a partnership;
- (e) An owner of a business;
- (f) An individual provider; or
- (g) A stockholder of a stock-holding company.

(25) "Qualified alien" or "qualified immigrant" means a child who meets the requirements of 921 KAR 2:006, Section 1(14).

(26) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(27) "Related" means having one (1) of the following relationships:

- (a) Child;
- (b) Stepchild;
- (c) Grandchild;
- (d) Great-grandchild;
- (e) Niece;
- (f) Nephew;
- (g) Sibling;
- (h) Child in legal custody; or
- (i) Child living in loco parentis.

(28) "Responsible adult" means a person other than the applicant who is in the child's household and who is:

- (a) The natural parent, adoptive parent, or stepparent; or
- (b) The spouse of an individual caring for a child in loco parentis.

(29) "School-age child" means a child who has reached the sixth birthday.

(30) "State median income" or "SMI" means the estimated median income of households in the state.

(31) "Supplemental Nutrition Assistance Program" or "SNAP" means the program, formerly known as the Food Stamp Program:

- (a) Defined by 7 U.S.C. 2012; and
- (b) Governed by 921 KAR Chapter 3.

(32) "Teen parent" means a head of household under the age of twenty (20) and attending high school or obtaining a GED.

(33) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2)(a) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation, an application shall have been made on the date:

1. The following is received at the cabinet or its designee's office:

- a. A signed DCC-90, Subsidized Child Care Assistance Application Summary; or
- b. Submission in accordance with 921 KAR 2:040, Section 1(6);

or

- 2. The agency is contacted, if the person:
 - a. Has a physical or mental disability; and
 - b. Needs special accommodation due to the impairment.

(b) An applicant may designate an authorized representative who presents identification to make application.

(c) An applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures established in 920 KAR 1:070, interpreter services shall be provided for persons who are:

- 1. Deaf; or
- 2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual in accordance with Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin, or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, 7, and 8 of this administrative regulation.

(a) An applicant or recipient shall be the primary source of information and shall:

- 1. Furnish verification of:
 - a. Income;
 - b. Technical eligibility; and
 - c. Employment; and
- 2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the eligibility determination.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to present adequate proof of eligibility.

(c) A homeless household shall have a minimum of three (3) months to verify information in accordance with 42 U.S.C. 9858c(c)(3)(B)(i).

(5) The cabinet or its designee shall:

(a) Render a decision on each application; and

(b) Within thirty (30) calendar days of receipt of the application submitted in accordance with subsection (2) of this section, send notice to the applicant in accordance with Section 12(4) of this administrative regulation.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

- (a) Assistance until approval of the application for benefits; or
- (b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a:

- 1. Resident of Kentucky; and
- 2. U.S. citizen, qualified immigrant, or qualified alien;

(b) Is under age:

- 1. Thirteen (13) at the time of application or recertification; or
- 2. Nineteen (19) at the time of application or recertification and

is:

a. Physically or mentally incapable of caring for themselves, as demonstrated by a written document provided by a health professional;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c) Has a current immunization certificate showing that the child is immunized, unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

- a. Licensed child-care center;
- b. Certified child-care home;
- c. Public school;
- d. Head Start; or
- e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days following the notification of the needed immunization while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the KTAP or SNAP case in which the child in need of child care assistance is included;

(d) A person living in the same residence as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child-care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child-care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) A Head Start program unless the child care is provided before, after, or in between the Head Start program's operating hours as wrap-around child care; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP if the requirements of 922 KAR 2:180 are met.

Section 4. Requirements for Low Income Working Family Eligibility Determination. (1) A child shall be eligible to receive CCAP if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who has employment an average twenty (20) hours per week;

(b) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(c) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional;

(d) A relative or fictive kin caregiver pursuant to 922 KAR 1:565 who meets:

1. All requirements in this section; and

2. Income eligibility standards established in Section 8 of this administrative regulation;

(e) A teen parent attending high school or pursuing a general equivalency degree (GED), including a period of recess or temporary break up to three (3) months; or

(f) An applicant who meets the eligibility requirements specified in Section 7 of this administrative regulation.

(2) A child shall be eligible to receive CCAP for a minimum of three (3) months or in accordance with Section 9 of this administrative regulation if the child meets the requirements specified in Section 3 of this administrative regulation and resides with:

(a) An applicant who is homeless;

(b) An applicant who is engaged in job search;

(c) A recipient after the loss of employment, a reduction in the required number of employment hours, or cessation of attendance at a job training or educational program in accordance with 42 U.S.C. 9858(c)(2)(N)(iii), to allow for job search or resumption of work or attendance at job training or educational program; or

(d) A recipient on maternity leave or other medical leave from employment as verified by a health professional, unless a temporary disability as verified by a health professional necessitates longer than three (3) months of CCAP eligibility.

(3) Effective October 24, 2022, to the extent funds are available, a household shall have all earned and unearned income excluded from the eligibility determination if an applicant or responsible adult meets the requirements of subsection (1) of this section and has verified employment in a regulated:

(a) Licensed child-care center; or

(b) Certified family child-care home.

(4) Compliance with subsection (1) of this section for an applicant or a responsible adult who is self-employed shall be determined by dividing income calculated in accordance with Section 8(6)(d) of this administrative regulation by an hourly pay rate of no less than minimum wage established in accordance with KRS 337.275.

Section 5. Requirements for Protection and Permanency Eligibility Determination.

(1) A child shall be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan in accordance with 922 KAR 1:430.

(3)(a) Based on the assessment in accordance with 922 KAR 1:330, the cabinet may waive the family copayment required by Section 11 of this administrative regulation for a child who participates in CCAP as a result of child protective services authorization.

(b) If the cabinet waives the family copayment in accordance with paragraph (a) of this subsection, the cabinet shall document the reason for the waiver in the child's protective services case plan.

Section 6. State-Funded Workforce Training Child Care Eligibility Determination. A child shall be eligible for CCAP if the child:

(1) Resides with an applicant who is participating in the:

(a) Kentucky Works Program established in 921 KAR 2:370; or

(b) Supplemental Nutrition Assistance Program Employment and Training Program (SNAP E&T) pursuant to 921 KAR 3:042; and

(2) Meets the requirements listed in Section 3 of this administrative regulation.

Section 7. Education and Job Training Child Care Eligibility Determination. (1) To the extent funds are available, a child shall be eligible for CCAP if the child:

(a) Resides with an applicant who:

1. Is enrolled in:

a.(i) A certified trade school or an accredited college or university; or

~~(ii) [A full-time program that leads to a general educational development (GED); or~~

~~[(iii)] A program that leads to a degree or certification; and~~

b. Accordance with subsection (2) of this section;

2. Is in good academic standing with the trade school, college, or university in which the applicant is enrolled;

3. Provides verification of enrollment and good academic standing from the trade school, college, or university in which the applicant is enrolled;

4. Meets income eligibility criteria of Section 8 of this administrative regulation; and

5. Has not received CCAP for more than sixty (60) months due to enrollment in a certified trade school or an accredited college or university; and

(b) Meets the requirements established in Section 3 of this administrative regulation.

(2) While an applicant is enrolled in a certified trade school or an accredited college or university:

(a) The applicant's coursework shall be completed in-person or online; and

(b) The applicant shall be classified as a full-time student as defined by the trade school, college, or university.

(3) An applicant who does not complete a term at a trade school, college, or university shall be responsible for the cost of child care tuition for the term.

Section 8. Income Eligibility. (1) A child shall be eligible for CCAP if the family's income is less than or equal to eighty-five (85) percent of the SMI as prepared by the U.S. Census Bureau through calendar year 2021 at initial application, recertification, or recalculation.

~~[(a)1. Through December 31, 2021, 160 percent of the federal poverty guidelines at initial application; and~~

~~2. Effective January 1, 2022, 200 percent of the federal poverty guidelines as adjusted annually by the U.S. Department of Health and Human Services through calendar year 2021 at initial application; or~~

~~(b)1. Through December 31, 2021, 200 percent of the federal poverty guidelines at recertification or recalculation; and~~

~~2. Effective January 1, 2022, eighty-five percent (85%) of the SMI as prepared by the U.S. Census Bureau through calendar year~~

2021 at recertification or recalculation.]

(2) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(3) A child who is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(4) Excluded income shall be:

- (a) KTAP child only payments, including back payment;
- (b) A payment received from the kinship care program, pursuant to 922 KAR 1:130, including back payment;
- (c) Educational grant, loan, scholarship, and work study income;
- (d) The value of a:

1. Kentucky Works supportive services payment pursuant to 921 KAR 2:017; or

2. SNAP E&T transportation payment pursuant to 921 KAR 3:042;

(e) The value of United States Department of Agriculture program benefits including:

- 1. Donated food;
- 2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;
- 3. Special food service program for a child pursuant to 42 U.S.C. 1775;
- 4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly allotment under SNAP;

(f) Payment made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(g) In-kind income;

(h) Reimbursement for transportation in performance of an employment duty, if identifiable;

(i) Nonemergency medical transportation payment;

(j) Highway relocation assistance;

(k) Urban renewal assistance;

(l) Federal disaster assistance and state disaster grant;

(m) Home produce utilized for household consumption;

(n) Housing subsidy received from federal, state, or local governments;

(o) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;

(p) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 1261, 1401, and 5501;

(q) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(r) Payment made to an individual from a program pursuant to 42 U.S.C. 4950 to 5085 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion;

(s) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(t) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(u) The principal of a verified loan;

(v) Up to \$12,000 to Aleuts and \$20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(w) The advance payment or refund of earned income tax credit;

(x) Payment made from the Agent Orange Settlement Fund;

(y) Payment made from the Radiation Exposure Compensation Trust Fund;

(z) Up to \$2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(aa) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(bb) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(cc) A payment received from the National Tobacco Growers Settlement Trust;

(dd) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1463;

(ee) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 34 U.S.C. 20102(c);

(ff) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans;

(gg) A discount or subsidy provided to Medicare beneficiaries pursuant to 42 U.S.C. 1395w-141;

(hh) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d);

(ii) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5);

(jj) Income or earnings from a program funded under the Workforce Innovation and Opportunity Act pursuant to 20 C.F.R. Parts 676-678 or 34 C.F.R. Part 361 or 463;

(kk) Waiver reimbursement in accordance with 907 KAR 1:170, 907 KAR 1:835, or 907 KAR 7:015 to a parent for the care of a child in the home; or

(ll) Supplemental Security Income (SSI) for a child.

(5) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self-employment.

(6) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall:

a. Not be rounded to the nearest dollar before adding or multiplying hourly or daily earnings; and

b. Be rounded to the nearest dollar before adding or multiplying weekly, biweekly, semi-monthly, monthly, quarterly, or annual earnings;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by adding gross income from each pay period, dividing by the total number of pay periods considered, and converting the pay period figure to a monthly figure by multiplying a:

a. Weekly amount by four and one-third (4 1/3);

b. Biweekly amount by two and one-sixth (2 1/6); or

c. Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received a calendar month of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period;

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3.c. of this paragraph; and

c. Rounding to the nearest dollar.

(c) For a case with unearned income, other than unearned self-

employment income, a monthly amount shall be determined by:

1. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and
2. Averaging the amount of unstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);
2. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and
3. Profit shall be determined by:
 - a. Rounding the total gross income to the nearest dollar;
 - b. Rounding the total amount of allowable expenses to the nearest dollar;
 - c. Dividing total gross income and total amount of allowable expenses separately by twelve (12) or the appropriate number of months, and rounding the quotients to the nearest dollar; and
 - d. Subtracting the rounded monthly allowable expense quotient from the rounded monthly gross income quotient.
- (e) If the cabinet or its designee becomes aware of a change in circumstance, the best estimate shall be recalculated.

Section 9. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be recertified at least every twelve (12) months.

(2) Eligibility shall be reviewed at each twelve (12) month recertification for a child who is placed with a relative or fictive kin caregiver. A child who is placed with a relative or fictive kin caregiver shall remain eligible pursuant to Section 5 of this administrative regulation for as long as the cabinet determines that child care is necessary in order to prevent child maltreatment or entry into the foster care system.

(3) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

(4) Unless a nonrelative is approved as fictive kin pursuant to 922 KAR 1:140 or 922 KAR 1:565 and Section 5 of this administrative regulation, a nonrelative who is acting in loco parentis for a child shall be required to show proof of efforts to seek permanent custody of the child or adopt the child within one (1) year of initial application as a condition of continued eligibility for CCAP.

(5) In accordance with 42 U.S.C. 9858c(c)(2)(N), if a family's income does not exceed eighty-five (85) percent of Kentucky's SMI, the family shall remain eligible for CCAP until recertification in accordance with this section.

(6)(a)1. Effective March 4, 2022, through August 31, 2022,~~[to the extent funds are available,]~~ the cabinet shall implement a transitional period in the Child Care Assistance Program. A child enrolled shall continue to receive assistance for three (3) months after becoming ineligible due to exceeding the income limitations established in Section 8 of this administrative regulation.

2. Effective September 1, 2022, to the extent funds are available, the cabinet shall implement a transitional period in the Child Care Assistance Program. A child enrolled shall continue to receive assistance for six (6) months after becoming ineligible due to exceeding the income limitations established in Section 8 of this administrative regulation.

(b) During the transitional period established in paragraph (a) of this subsection, the provider shall continue to receive fifty percent (50%) of the lesser amount of the provider subsidized rate or maximum payment rate established in the DCC-300, rounded up to the nearest whole dollar.

Section 10. Payment Rates and Policy. (1)(a) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rate Chart.

(b) The rates in the DCC-300 shall represent the maximum payment rates on a per day, per child, per child care provider basis.

(c) The maximum payment rates shall include the following categories:

1. Full day;
2. Part day;
3. Licensed Type I;
4. Licensed Type II;
5. Certified;
6. Registered;
7. Infant/Toddler;
8. Preschool child; and
9. School-age child.

(2) To the extent funds are available, a licensed or certified provider shall receive:

(a) Two (2) dollars per day through July 31, 2022, and effective August 1, 2022, five (5) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;
2. National Early Childhood Program Accreditation;
3. National Association for Family Child Care;
4. Council on Accreditation; or
5. Other accrediting body approved by the Early Childhood Advisory Council or the cabinet; or

(b) One (1) dollar per day through July 31, 2022, and effective August 1, 2022, ten (10) dollars per day beyond the maximum rate for nontraditional care for providing child care assistance based on the parent's schedule between:

1. 7 p.m. to 5 a.m. daily; or
2. Friday, 7 p.m. through Monday, 5 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider shall receive a special care rate of one (1) additional dollar per day through July 31, 2022, and effective August 1, 2022, five (5) additional dollars per day beyond the maximum rate for care of a child:

- (a) With a special need; or
- (b) Who is age thirteen (13), but under age nineteen (19) at application or recertification, and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or
2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

- (a) Three (3) children receiving CCAP per day; or
- (b) Six (6) children receiving CCAP per day, if those children are:
 1. A part of a sibling group; and
 2. Related to the provider.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required enrollment fees shall be paid no more than three (3) times in a twelve (12) month period for a family meeting the requirements in Section 5 or 6 of this administrative regulation.

Section 11. Family Copayment. (1) Unless a family copayment has been waived in accordance with Section 5(3) of this administrative regulation, a family of a child served by the CCAP shall be responsible for a copayment in accordance with the family copayment table in subsection (3) of this section.

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, the court-ordered payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3)(a) The cabinet or its designee shall determine a copayment that a family shall pay to the provider for the cost of child care, based on the following table:

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Family Co-Payment Per Day									
Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay		
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more	
0	899	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
900	999	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
1,000	1,099	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
1,100	1,199	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
1,200	1,299	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
1,300	1,399	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
1,400	1,499	\$6	\$5	\$6	\$5	\$6	\$4	\$4	
1,500	1,599	\$7	\$6	\$6	\$6	\$6	\$5	\$5	
1,600	1,699	\$8	\$6	\$7	\$6	\$7	\$6	\$6	
1,700	1,799	\$9	\$7	\$8	\$7	\$8	\$6	\$7	
1,800	1,899	\$10	\$8	\$9	\$7	\$8	\$7	\$8	
1,900	1,999	\$10	\$9	\$10	\$8	\$9	\$8	\$9	
2,000	2,099	\$11	\$10	\$11	\$8	\$9	\$8	\$9	
2,100	2,199.99	\$12	\$10	\$11	\$9	\$10	\$9	\$10	
2,200	2,299.99	\$12	\$11	\$12	\$10	\$11	\$9	\$10	
2,300	2,399.99	\$12	\$12	\$13	\$11	\$12	\$9	\$10	
2,400	2,499.99	\$12	\$12	\$13	\$12	\$13	\$10	\$11	
2,500	2,599.99	\$12	\$13	\$14	\$12	\$13	\$10	\$11	
2,600	2,699.99	\$12	\$13	\$14	\$13	\$14	\$12	\$13	
2,700	2,799.99	\$12	\$13	\$14	\$13	\$14	\$13	\$14	
2,800	2,899.99	\$12	\$13	\$14	\$14	\$15	\$14	\$15	
2,900	2,999.99	\$12	\$13	\$14	\$14	\$15	\$16	\$17	
3,000	3,099.99	\$12	\$13	\$14	\$15	\$16	\$18	\$19	
3,100	3,199.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21	
3,200	3,299.99	\$12	\$13	\$14	\$15	\$16	\$20	\$21	
3,300	3,399.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23	
3,400	3,499.99	\$12	\$13	\$14	\$15	\$16	\$22	\$23	
3,500	3,599.99	\$12	\$13	\$14	\$15	\$16	\$24	\$25	
3,600	3,699.99	\$12	\$13	\$14	\$15	\$16	\$25	\$25	

(b) The maximum copayment for an eligible family with more than five (5) members shall be twenty-five (25) dollars.

(c) In accordance with 45 C.F.R. 98.21, a copayment for an eligible family shall:

1. Be determined at initial application or recertification; and
2. Not increase during the twelve (12) month eligibility period.

Section 12. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool, or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

- (a) Be offered choice of child care assistance subject to the availability of state and federal funds; and
- (b) Receive a DCC-94, Child Care Service Agreement and Certificate.

(3) Upon enrollment or reenrollment with a provider, an applicant approved in accordance with Section 4 of this administrative regulation shall sign and return the:

- (a) DCC-94; or
- (b) DCC-90.

(4) Notification of action. (a) A DCC-94C, Provider Notification Letter, shall provide notice to a provider of a child's discontinuation from CCAP or disenrollment with a provider.

(b) A DCC-94.1, CHILD CARE Approval/Change Notice, shall provide notice of:

1. A change in the certification period of child;
2. Approval of an application; or
3. Continued eligibility.

(c) A DCC-105, Child Care Denial/Discontinuance Notice, shall provide notice of:

1. Denial of an application;
2. Discontinuance of a CCAP benefit;

3. Reason for adverse action;

4. Citation from an applicable state administrative regulation; and

5. Information regarding the opportunity to request an administrative hearing in accordance with Section 18 of this administrative regulation.

(d) The language on the form shall differ according to the purpose of the notice described in paragraphs (a) through (c) of this subsection.

(5) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in a circumstance within ten (10) calendar days of the day the change is known.

(6) Failure to report a change in a circumstance may result in a:

(a) Decrease or discontinuance of CCAP benefits based on the type of change; or

(b) Claim in accordance with 922 KAR 2:020.

(7) An applicant for a child served by CCAP who fails to cooperate with a cabinet quality control or case review shall be:

- (a) Discontinued from CCAP benefits; and
- (b) Unable to participate in CCAP until the applicant meets the requirements of the quality control or case review.

(8) An applicant for a child served by CCAP shall report to the cabinet or its designee a provider whom the applicant suspects is not fulfilling requirements in accordance with Section 14(1)(c) of this administrative regulation.

Section 13. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment, or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

(b) 922 KAR 2:090, Child-care center licensure;

(c) 922 KAR 2:100, Certification of family child-care homes;

(d) 922 KAR 2:120, Child-care center health and safety standards;

(e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) 922 KAR 2:190, Civil penalties;

(g) 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes; and

(h) 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals.

(4) The cabinet or its designee shall complete a home inspection of a registered child care provider in CCAP in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180.

(5) If CCAP benefits are reduced or discontinued due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(6) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(7) The cabinet shall send a notice of adverse action at least ten (10) calendar days in advance of taking adverse action.

(8) In accordance with 45 C.F.R. 98.46, the cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective or preventive services authorization;

(b) A child with a special need;

(c) A child experiencing homelessness as defined by 45 C.F.R. 98.2;

(d) A child in the custody of the cabinet;

(e) KTAP recipients participating in the Kentucky Works Program established in 921 KAR 2:370;

(f) Teen parents attending high school or pursuing a general equivalency degree (GED);

(g) A KTAP recipient attempting to transition off assistance through employment;

(h) A parent whose KTAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(i) A low income working parent; or

(j) A parent in education or training programs leading to self-sufficiency.

Section 14. Provider Requirements. (1) A licensed child-care center, certified family child-care home, or registered child care provider that serves a child who participates in the CCAP shall:

(a) Sign and give to the parent for submission to the cabinet or its designee, upon a child's enrollment or reenrollment with the provider and prior to receiving payment from the CCAP, the DCC-94;

(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee;

(c) 1. Maintain the DCC-94E, Child Care Daily Attendance Record, or a cabinet approved electronic billing system in which the attendance is:

a. Recorded legibly each time the child arrives and each time the child departs the provider's care; and

b. Signed or electronically recorded legibly with first and last name by the parent or applicant for the child served by CCAP; and

2. Submit the DCC-94E or electronic daily attendance record upon request of the cabinet or its designee;

(d) Comply with the applicable regulatory requirements pursuant to:

1. 922 KAR 2:020, Child Care Assistance Program (CCAP) improper payments, claims, and penalties;

2. 922 KAR 2:090, Child-care center licensure;

3. 922 KAR 2:100, Certification of family child-care homes;

4. 922 KAR 2:120, Child-care center health and safety standards;

5. 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

6. 922 KAR 2:190, Civil penalties;

7. 922 KAR 2:270, Kentucky All STARS quality-based graduated early childhood rating system for licensed child-care centers and certified family child-care homes; and

8. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals;

(e) Complete the cabinet approved training on billing and the DCC-94E prior to receiving an initial payment from CCAP; and

(f) Complete, retain on file, and provide to the CCAP billing section a certificate of completion for cabinet approved training on billing once during each year of operation or upon change of the staff member submitting billing information.

(2) A licensed or certified child care provider shall complete and submit the DCC-94B, Licensed or Certified Provider Agreement Form, prior to receiving payment from CCAP.

(3) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) absences per month per child.

(4)(a) If CCAP records indicate that a certified family child-care home or a licensed child-care center is operating over capacity, as specified in 922 KAR 2:100 or 922 KAR 2:120 respectively, by having two (2) or more shifts, the cabinet shall request an operating plan from the provider.

(b) An operating plan in accordance with paragraph (a) of this subsection shall specify:

1. Each employee of each shift;

2. The work hours for each employee of each shift;

3. The management for each shift;

4. The work hours for each management employee of each shift; and

5. The children enrolled for each shift.

(c) The cabinet shall approve a provider for overcapacity if:

1. The operating plan meets all requirements of:

a. For a licensed child-care center, 922 KAR 2:090 and 922 KAR 2:120; or

b. For a certified family child-care home, 922 KAR 2:100; and

2. The provider has had less than two (2) health, safety, or welfare deficiencies or violations within the previous twenty-four (24) month period, even if deficiencies were corrected.

(5) A registered child care provider in CCAP shall comply with an inspection in accordance with 42 U.S.C. 9858c(c)(2)(K)(i)(IV) and 922 KAR 2:180 conducted by the cabinet or its designee.

(6) A provider shall be ineligible for CCAP if the provider:

(a) Was discontinued or disqualified from participation in a governmental assistance program due to fraud or abuse of the program;

(b) Has had a previous ownership interest in a child-care provider, which had a prior certification, license, registration, or permit to operate denied, suspended, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action; or

(c) Is a parent, spouse, sibling, or child of a previous provider described in paragraphs (a) and (b) of this subsection, and the previous provider will be involved in the new provider's operations in any capacity.

Section 15. Other Services. To the extent funds are available, a child whose family's income is over the income limits for the CCAP described in Section 8 of this administrative regulation may be eligible for:

(1) Child care payments;

(2) Enrollment fees;

(3) Activity or day trip fees;

(4) Material fees;

(5) Transportation fees; or

(6) Other items relating to child care services with prior approval of the cabinet.

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Section 16. An improper payment, claim, or penalty in CCAP shall be handled in accordance with 922 KAR 2:020.

Section 17. Criteria for Nonpayment. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:

1. A death in the family;
2. An illness of the:

- a. Child; or
- b. Applicant; or

3. A disaster verified by utility provider, local, state, or federal government;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Not be made to a registered provider for any absences;

(d) Be denied in accordance with KRS 199.8994(6);

(e) Cease if a family or provider defaults on a payment in accordance with Section 11 of this administrative regulation or 922 KAR 2:020;

(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP;

(g) Not be made to a provider for payment requests ninety (90) days after the date of service;

(h) Not be made to a licensed or certified provider for more than ten (10) holidays per calendar year;

(i) Cease if a provider denies:

1. A parent of a child in care, the cabinet, the cabinet's designee, or a representative of an agency with regulatory authority:

- a. Entry into the provider's premises during operating hours; or
- b. Access to a child in care; or

2. The cabinet, the cabinet's designee, or a representative of an agency with regulatory authority access to the provider's records relevant to a:

a. Cabinet review, including CCAP quality control or case review; or

b. Review by another agency with regulatory authority;

(j) Not be made to a provider if the provider's DCC-94E in accordance with Section 14(1)(c) of this administrative regulation does not support billing for a child reported as served for the same period of time on the DCC-97;

(k) Not be made if a licensed or certified provider cares for a child served by CCAP at a location not specified on the DCC-94; or

(l) Not be made to a provider for a child in care over the capacity of the provider, as governed by 922 KAR 2:100 or 922 KAR 2:120, unless an operating plan is approved in accordance with Section 14(4) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 13(8) of this administrative regulation.

Section 18. Administrative Hearings. (1) A CCAP applicant or recipient may request an administrative hearing regarding eligibility determination, recalculation, or recertification in accordance with 921 KAR 2:055.

(2) An administrative hearing pertaining to a matter not specified in subsection (1) of this section may be requested in accordance with:

- (a) 922 KAR 2:260; or
- (b) 922 KAR 2:020.

Section 19. Records. Records of CCAP shall be maintained and disclosed in accordance with:

- (1) KRS 194A.060;
- (2) 45 C.F.R. 98.90(e); and
- (3) 45 C.F.R. 205.50(a)(1)(i).

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Subsidized Child Care Assistance Application Summary", 7/2019;

(b) "DCC-94, Child Care Service Agreement and Certificate", 07/21;

(c) "DCC-94.1, CHILD CARE Approval/Change Notice", 10/17;

(d) "DCC-94B, Licensed or Certified Provider Agreement Form", 04/17;

(e) "DCC-94C, Provider Notification Letter", 10/17;

(f) "DCC-94E, Child Care Daily Attendance Record", 07/22[7/13];

(g) "DCC-97, Provider Billing Form", 04/13;

(h) "DCC-105, Child Care Denial/Discontinuance Notice", 10/17; and

(i) "DCC-300, Kentucky Child Care Maximum Payment Rate Chart", 12/21.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. 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: June 21, 2022

FILED WITH LRC: July 1, 2022 at 8:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 26, 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 September 19, 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 September 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: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the cabinet to qualify for federal funds under the Child Care and Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program (CCAP) to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of CCAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of CCAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the CCAP in a manner that is consistent with federal and state requirements,

including available funding, and the interests of the clients to be served, child care providers, and taxpayers.

(2) If 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 the administrative regulation incorporates funds received from the American Rescue Plan Act (ARPA) and funds appropriated from the General Assembly for the Child Care Assistance Program. ARPA was signed into law on March 11, 2021, and includes multiple funding provisions impacting families and the child care sector.

This amendment increases the income eligibility for families at initial application from 200 percent of the federal poverty guidelines to eighty-five percent (85%) of the SMI as prepared by the U.S. Census Bureau, which formerly was the eligibility level for recertification. This change is expected to increase the number of families eligible at initial application.

Effective August 1, 2022, to the extent funds are available, federal ARPA funds will be used to increase CCAP add-on incentive rates. The special care rate will increase from one (1) to five (5) additional dollars per day beyond the state maximum rate for full day and part day care. The provider accreditation rate will increase from two (2) dollars per day beyond the maximum rate to five (5) dollars per day beyond the maximum rate. The nontraditional hours add-on rate will increase from one (1) additional dollar per day to ten (10) additional dollars per day, incentivizing providers to consider operating during nontraditional hours.

Effective September 1, 2022, the transition period during which a household still receives Child Care Assistance Program assistance after becoming ineligible due to exceeding income guidelines will be extended from three (3) to six (6) months. Federal ARPA funds are being used in this manner to assist families who may be experiencing a benefit cliff effect.

Effective October 24, 2022, to the extent funds are available, the amendment includes that household income will be exempted from the program eligibility determination if an applicant or responsible adult meets the eligibility requirements of Sections 3 and 4 of the administrative regulation and is employed by a regulated licensed child-care center or certified family child-care home. This may further incentivize employment in a child-care center or family child-care home. The “DCC-94E, Child Care Daily Attendance Record” is being amended to include that an overpayment shall (rather than may) be pursued as an intentional program violation.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to obligate remaining funds from the American Rescue Plan Act for the purpose of supporting child care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning policy with more efficient operations, promoting parents’ efforts to achieve self-sufficiency and the provision of quality child care, enhancing program integrity, and preserving the health and welfare of vulnerable children. This amendment obligates funds received through the American Rescue Plan Act.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its refinement of CCAP in accordance with federal and state laws and the interests of households and children served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 2022, there were 15,096 families and 26,946 children enrolled in CCAP, and over 1,600 child care providers participating in CCAP. This is an increase of approximately 3,000 families and children participating in the program since May 2021.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: The amendment to this administrative regulation will create no new actions for these entities, but more families and children may be eligible for program assistance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Families will benefit from increased income eligibility standards at initial application and the expansion of the CCAP transitional period from three (3) to six (6) months. Providers may experience a funding increase related to specific incentive rates, including for accreditation, special care, and operating in nontraditional hours. Applicants who meet other eligibility requirements and are employed by a licensed child-care center or certified family child-care home will have their income exempted from the eligibility determination in order to further incentivize staffing efforts in the child care sector.

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

(a) Initially: The amendment to this administrative regulation will be implemented within available federal and state appropriations for CCAP.

(b) On a continuing basis: The administrative regulation will be implemented within available federal and state appropriations for CCAP. The administrative body will continually monitor its costs to make any adjustments necessary to maintain CCAP and related services 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 to be used for implementation and enforcement of this administrative regulation are the federal Child Care and Development Fund Block Grant, state match, state maintenance of effort funds, and state General Funds. This amendment is being implemented through the use of federal American Rescue Plan Act (ARPA) funds.

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

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

(9) TIERING: Is tiering applied? The Child Care Assistance Program is implemented in a like manner statewide. However, provider payment rates are tiered to recognize the higher operating costs of certain geographical, more populated areas. The provider payment rates were originally established based on the classification of cities. The rates are further supported by the analysis of the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

(2) State compliance standards. KRS 194A.050(1), 199.892, 199.8994

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation. Any local government or school district operating a child care program that receives CCAP will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994, 45 C.F.R. 98, 42 U.S.C. 601-619, 9857-9858q

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will be implemented with funds from the American Rescue Plan Act and General Fund appropriations.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will be implemented within available federal appropriations through the American Rescue Plan Act and General Fund appropriations. The Child Care Assistance Program is funded through Child Care and Development Fund Block Grant federal funds and state appropriations.

(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 regulated entities, but will result in additional funding available to child care providers and additional assistance available to eligible families and children.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings are not anticipated.

(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.

Revenues (+/-):

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 and amendment makes funding available to regulated entities and eligible families and is not anticipated to have a negative or adverse economic impact to regulated entities.

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](#).

EDUCATION AND LABOR CABINET Education Professional Standards Board (New Administrative Regulation)

16 KAR 9:100. Alternative route to Certification Institute.

RELATES TO: KRS 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 directs the Education Professional Standards Board (EPSB) to adopt administrative regulations establishing standards and procedures for the alternative route to certification institute and the approval for these programs. This administrative regulation establishes the required elements of the route and the application review process.

Section 1. Institute Providers. (1) Providers who are not currently accredited by the EPSB in accordance with 16 KAR 5:010, are recommended to demonstrate partnerships with institutions of higher education accredited by the EPSB and school districts or cooperatives recognized by the Kentucky Department of Education.

(2) Providers shall submit an application to the EPSB in accordance with the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute.

Section 2. Application Review. (1) Applications to provide an alternative route to certification institute shall be submitted to EPSB staff.

(2) EPSB staff shall complete an initial review to ensure that the application addresses the requirements of KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute.

(a) If EPSB staff determines that the application addresses the requirements, it shall be forwarded to an external review team.

(b) If EPSB staff determines that the application does not address all the requirements, staff shall notify the provider of the deficiencies.

(3) An external review team of trained reviewers identified by EPSB staff shall review the application in accordance with KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute.

(4) The external review team shall be comprised of:

(a) One (1) representative from an EPSB accredited postsecondary institution;

(b) One (1) representative from a Kentucky education cooperative; and

(c) One (1) representative from a Kentucky public school district.

(5) The external review team shall review the application to provide an alternative route to certification institute and determine the quality of the application. The review team shall recommend acceptance or denial of the application to the EPSB and shall include a supporting rationale for the recommendation.

(6) The EPSB shall review the external review team's recommendation, shall approve or deny each application, and shall transmit the decision and rationale for the decision to the provider.

(7) The provider may revise and resubmit a plan that has been denied.

(8) Any approval granted by the EPSB shall specify the period of approval of the institute, which shall not exceed two (2) years for initial approval. Providers may apply for an extension of approval as outlined in Section 3 of this administrative regulation.

Section 3. Continuance of Program Approval. (1) An institute provider may apply for continuance of an approved alternative route to certification institute for an additional period of time not to exceed seven (7) years. The request for continuance shall specify any changes in program components that have occurred since the institute received prior EPSB approval and that are planned for implementation in subsequent training periods.

(2) The request for continuance shall provide specific examples of demonstrating program quality. The request for continuance shall set forth statistical information related to teacher retention for all prior candidates who have completed the institute. Standards for program approval and program quality specified under this administrative regulation shall be maintained under any program extension.

Section 4. Revocation for Cause. (1) If an area of concern or an allegation of misconduct arises after an institute has been approved, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter to the external review team for further investigation.

(3)(a) Notice of the EPSB's decision to refer the matter and the complaint shall be sent to the provider.

(b) Within thirty (30) days of receipt of the complaint, the provider shall respond to the allegations in writing and provide evidence pertaining to the allegations in the complaint to the EPSB.

(4)(a) The external review team shall review any evidence supporting the allegations and any information submitted by the provider.

(b) The external review team may conduct on-site evaluations to evaluate the quality of the programs.

(c) Upon completion of the review, the external review team shall issue a report recommending to the EPSB continued approval of the institute or revocation of institute approval if the institute no longer meets the standards and requirements for approval.

(5) The provider shall receive a copy of the external review team's report and may file a response to the recommendation.

(6)(a) The recommendation from the external review team and the provider's response shall be presented to the EPSB.

(b) The EPSB shall consider the findings and recommendations of the external review team and make a final determination regarding the approval of the institute.

Section 5. Appeals Process. (1) If a provider seeks appeal of an EPSB decision, the provider shall appeal within thirty (30) days of receipt of the EPSB official notification. A provider shall appeal on the grounds that:

(a) A prescribed standard was disregarded;

(b) A procedure was not followed; or

(c) Evidence of compliance in place at the time of the review and favorable to the provider was not considered.

(2) An appeals panel of no fewer than three (3) members shall be appointed by the EPSB chair from members of the EPSB who do not have a conflict of interest regarding the provider or institute. The ad hoc committee shall recommend action on the appeal to the full EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.

Section 6. Data Reports. (1) The EPSB shall maintain data reports related to the following:

(a) Approval status of all EPSB approved Option 7 programs;

(b) Contact information for the person responsible for the institute;

(c) Year of last program review;

(d) Tables relating the institute total enrollment disaggregated by ethnicity and gender for the last three (3) years;

(e) Tables relating the institute faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;

(f) Table of the number of program completers for the last three (3) years;

(g) Table relating pass rates on the required assessments;

(h) Table relating program completer satisfaction with the preparation program; and

(i) Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.

(2) Providers shall report to the EPSB staff at the end of each school year continuous improvement efforts relating to the institute.

Section 7. Temporary Provisional Certificate. (1) An eligible candidate who meets the requirements of KRS 161.048 (8)(a)1.-4. and 16 KAR 2:010, Section 3 (1), shall be issued a one-year provisional teaching certificate.

(2) The candidate shall apply to the EPSB and provide:

(a) Official transcripts of all college work undertaken by the candidate establishing proof of a bachelor's degree or graduate degree and grade point average;

(b) Proof of a passing score on the admission assessments as established in 16 KAR 5:020;

(c) Proof of a passing score on the academic content assessment, as established in 16 KAR 6:010, in the area in which certification is being sought;

(d) Verification by the institute provider of completion of half of the requisite institute hours; and

(e) Evidence of employment in a Kentucky school district or nonpublic school in the content area of the certification.

(3) The temporary provisional certificate may be renewed for a maximum of two (2) additional years.

(4) A candidate shall be eligible for first renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Verification of completion of:

1. 240 hour institute for elementary or K-12 certification; or

2. 180 hour institute for middle or high school certification.

(b) Evidence of employment in a Kentucky school district or nonpublic school in the content area of the certification.

Section 8. Professional Certificate. (1) Upon completion of all program requirements of the alternative route to certification institute, the applicant may apply for the professional certificate.

(2) Prior to issuance of the professional certificate, the candidate shall obtain a passing score on the pedagogy assessment, as established in 16 KAR 6:010, for the certificate being sought.

(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue the candidate a professional certificate.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference: "Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute", 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: July 6, 2022

FILED WITH LRC: July 13, 2022 at 3:55 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 26, 2022, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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 administrative regulation establishes the standards and procedures of the Option 7 institute route to certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards and procedures for the Option 7 institute route to certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.048(8) creates the Option 7 alternative route to certification and KRS 161.048(1)(e) requires the Education Professional Standards Board to promulgate administrative regulations establishing standards and procedures for the alternative certification options.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for providing an Option 7 alternative route to certification program as well as the requirements for candidates of the route to obtain certification.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, 31 Institutions of Higher Education with and approved educator preparation program, and applicants for certification.

(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: School districts and educator preparation providers will have to meet the requirements of this regulation and apply to the Education Professional Standards Board to be approved to offer Option 7 programs. Candidates of this route will have to complete the program requirements and apply to the Education Professional Standards Board for certification upon completion.

(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 fee established by the Education Professional Standards Board in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants to provide an Option 7 program will meet the requirements for approval by the Education Professional Standards Board. Candidates for this route will have access to high quality programs.

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

(a) Initially: The initial cost to implement this regulation will be the time and resources for processing and reviewing the applications to provide an Option 7 program. In the past there have been very few applicants to provide an Option 7 route.

(b) On a continuing basis: The continuing cost to implement this regulation will be the staff time and resources for processing applications to provide an Option 7 program and applications for certification from program completers. It is unknown how many applications will be received.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

General Fund and certification fees collected pursuant to 16 KAR 4:040.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this time, it is not expected that an increase in fees or funding will be necessary for the Education Professional Standards Board to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

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 Education Professional Standards Board, public-school districts, and public institutions of higher education with approved educator preparation programs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.030, KRS 161.048.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 will not generate any revenue for the Education Professional Standards Board in the first year. This will not generate revenue for participating school districts but may generate revenue in the form of tuition for participating institutions of higher education.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Each applicant for certification through this route will have to pay the certification fee established in 16 KAR 4:040. In the past, this route has not garnered much interest so it is unknown how many applications will be received through it. Certification fees are a part of the Education Professional Standards Board's restricted funds, that in accordance with KRS 161.028 (1)(m) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder. In subsequent years, this will not generate revenue for participating school districts but may generate revenue in the form of tuition for participating institutions of higher education.

(c) How much will it cost to administer this program for the first year? For the first year, cost will be the time and resources for processing and reviewing the applications to provide an Option 7 program. There will also be development costs for the school districts and institutions of higher education wishing to offer an Option 7 program. Those costs are not established by this regulation but are inherent in the statutory requirements of the route.

(d) How much will it cost to administer this program for subsequent years? For the subsequent years, the cost will be the staff time and resources for reviewing applications to offer an Option 7 program, overseeing the continuous review of providers, processing the applications for certification from route completers and issuing certificates. This will vary depending on the number of applications and certificates. There will also be ongoing costs to providers to run the institutes and offer mentoring and support to candidates. These costs are not established by this administrative regulation but are inherent in the statutory requirements of the route.

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: At this time, it is unknown how many future educators will pursue this route. Applicants will be required to pay the certification fee established in 16 KAR 4:040. The certification fees collected for these applications will offset the costs of issuance.

(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 anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None anticipated.

(c) How much will it cost the regulated entities for the first year? There will be initial costs to school districts and institutions of higher education wishing to participate in this route; however, those costs are not created by this regulation but are inherent to the route and its statutory requirements.

(d) How much will it cost the regulated entities for subsequent years? There will be costs to school districts and institutions of higher education wishing to participate in this route; however, those costs are not created by this regulation but are inherent to the route and its statutory requirements.

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)] There is not an expected major economic impact from this regulation as it does not create costs for the Education Professional Standards Board or the regulated entities.

EDUCATION AND LABOR CABINET Education Professional Standards Board (New Administrative Regulation)

16 KAR 9:110. Expedited route to certification.

RELATES TO: KRS 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 directs the Education Professional Standards Board (EPSB) to adopt administrative regulations establishing standards and procedures for the alternative routes to certification. This administrative regulation establishes the standards and procedures of the Option 9 expedited route to certification.

Section 1. Route Providers. (1) Expedited routes to certification shall be provided by a Kentucky public school district or group of districts in partnership with a college or university with an accredited educator preparation provider (EPP) recognized by the EPSB.

(2) The expedited route program shall only include the EPP's existing undergraduate initial certification educator preparation programs approved by the EPSB.

(3) Providers shall submit an application to the EPSB that includes:

(a) An agreement between the district or group of districts and the EPP to collaborate on the expedited route program.

(b) An understanding between the district and EPP that the expedited route program shall not negatively impact the accreditation of the EPP.

(c) Contact information for the EPP leader and the district or group of districts leader.

(d) Description of when the expedited route program is offered,

the method of delivery and the certification areas included.

(e) A process to maintain regular communication between the employing school and EPP so that the EPP and employing school may assist the resident as needed and address identified areas of improvement.

(f) Explanation of how the district or group of districts in cooperation with the EPP shall address the program requirements contained in Sections 2, 3 and 4 of this administrative regulation.

Section 2. Residency. (1) All candidates for the expedited route to certification shall meet the admission requirements established in 16 KAR 5:020.

(2) Candidates shall be employed in a classified position with the district while completing coursework from the EPP expedited route program.

(3) A resident shall not have responsibility for the supervision or instruction of P-12 students without the direct supervision of a certified educator.

(4) The district in consultation with the EPP shall ensure that the resident receives training on the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020.

(5) The resident shall adhere to the Professional Code of Ethics for Kentucky School Certified Personnel established in 16 KAR 1:020.

(6) The district shall provide coaching and mentoring of the resident throughout the program.

(7) If the district terminates the resident from classified employment, the EPP may transfer the resident to a traditional preparation program but the resident shall no longer be enrolled in the expedited route.

(8) Students wishing to transfer from another route to the expedited route shall be in good standing with their EPP.

(9) Students transferring to the expedited route shall be required to complete the field experience and student teaching outlined in Sections 3 and 4 of this administrative regulation.

Section 3. Field Experience. (1) During the first two (2) years of the residency, the district shall ensure that the candidate shall complete a minimum of two hundred (200) clock hours of field experiences in a variety of primary through grade 12 school settings which allow the candidate to participate in the following:

(a) Engagement with diverse populations of students which include:

1. Students from a minimum of two (2) different ethnic or cultural groups of which the candidate would not be considered a member;
2. Students from different socioeconomic groups;
3. English language learners;
4. Students with disabilities; and
5. Students from across elementary, middle school, and secondary grade levels;

(b) Observation in schools and related agencies, including:

1. Family Resource Centers; or
2. Youth Service Centers;

(c) Student tutoring;

(d) Interaction with families of students;

(e) Attendance at school board and school-based council meetings;

(f) Participation in a school-based professional learning community; and

(g) Opportunities to assist teachers or other school professionals.

(2) The district shall maintain and share with the EPP electronic records that confirm all residents have fulfilled the field experiences required in subsection (1) of this section.

Section 4. Student Teaching. (1) During the third year of the residency, the district shall provide opportunities for the student teacher to assume major responsibility for the full range of teaching duties, including extended co-teaching experiences, in a real school situation under the guidance of qualified personnel from the district and EPP. The EPP and the school district shall make reasonable efforts to place residents in settings that provide opportunities for the resident to develop and demonstrate the practical skills, knowledge, and professional dispositions essential to help all P-12 students learn and develop.

(2) The resident shall be placed in a setting that is consistent with his or her planned certification content and grade range.

(3) The placement shall provide the resident with the opportunity to engage with diverse populations of students.

(4) The third year of residency shall be in instructional settings that correspond to the grade levels and content areas of the resident's certification program. Specifically:

(a) Residents pursuing a primary through grade 12 certificate shall have their student teaching balanced between an elementary school placement and middle school or high school placement.

(b) Residents pursuing an elementary certificate shall have their student teaching balanced between a placement in primary through grade 3 and a placement in grade 4 or grade 5.

(c) Residents seeking dual certification in either middle school or secondary content areas shall have equal placements in both content areas.

(5) The district shall place the resident with a cooperating teacher or teachers who have:

(a) A valid teaching certificate or license for each grade and subject taught;

(b) At least three (3) years of teaching experience as a certified educator; and

(c) Completed the cooperating teacher training in Section 1 of 16 KAR 5:040.

(6) A teacher assigned to a teaching position on the basis of a provisional or emergency certificate issued by the EPSB shall not be eligible for serving as a cooperating teacher.

(7) The district or group of districts shall share with the EPP and file an electronic report with the EPSB which identifies the following:

- (a) Each resident completing the third year;
- (b) The resident's assigned school;
- (c) The cooperating teacher assigned to each resident;
- (d) The cooperating teacher's area of certification;
- (e) The cooperating teacher's years of experience as a certified or licensed educator.

(8) The EPP shall assign a supervisor to the third-year resident. The supervisor shall conduct a minimum of four (4) observations of the resident in the actual teaching situation.

(9) The observations may be remote.

(10) The observation reports shall be filed as a part of the student teacher record and used as a validation of the supervisory function.

(11) The EPP supervisors shall be available to work with the resident and personnel in the district regarding any problems that may arise relating to the student teaching situation.

(12) The EPP supervisors shall complete the university supervisor training in Section 4 of 16 KAR 5:040.

(13) The district shall maintain and share with the EPP electronic records that confirm that all third-year residents meet the requirements of this section.

Section 5. Application Review.

(1) Applications to provide an expedited route to certification shall be submitted to EPSB staff.

(2) EPSB staff shall complete an initial review to ensure that the application addresses the requirements of KRS 161.048(10) and this administrative regulation.

(a) If EPSB staff determines that the application addresses the requirements, it shall be forwarded to the EPSB for review at an EPSB meeting.

(b) If EPSB staff determines that the application does not address all the requirements, staff shall notify the provider of the deficiencies.

(3) The EPSB shall review the application, shall approve or deny each application, and shall transmit the decision and rationale for the decision to the provider.

(4) The provider may revise and resubmit a plan that has been denied.

(5) Any approval granted by the EPSB shall specify the period of approval, which shall not exceed three (3) years for initial approval. Providers may apply for an extension of approval as outlined in Section 6 of this administrative regulation.

Section 6. Continuance of Program Approval. (1) An expedited route provider may apply for continuance of an approved expedited

route program for an additional period of time not to exceed seven (7) years. The request for continuance shall specify any changes in program components that have occurred since the program received prior EPSB approval and that are planned for implementation in subsequent training periods.

(2) The request for continuance shall provide specific examples of demonstrating program quality. The request for continuance shall set forth statistical information related to teacher retention for all prior candidates who have completed the program. Standards for program approval and program quality specified under this administrative regulation shall be maintained under any program extension.

Section 7. Revocation for Cause. (1) If an area of concern or an allegation of misconduct arises after approval, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter for further investigation.

(3)(a) Notice of the EPSB's decision to refer the matter and the complaint shall be sent to the provider.

(b) Within thirty (30) days of receipt of the complaint, the provider shall respond to the allegations in writing and provide evidence pertaining to the allegations in the complaint to the EPSB.

(4)(a) Staff shall review any evidence supporting the allegations and any information submitted by the provider.

(b) Staff may conduct on-site evaluations to evaluate the quality of the programs.

(c) Upon completion of the review, staff shall issue a report recommending to the EPSB continued approval of the expedited route program or revocation of the expedited route program if it no longer meets the standards and requirements for approval.

(5) The provider shall receive a copy of staff's report and may file a response to the recommendation.

(6)(a) The recommendation from staff and the provider's response shall be presented to the EPSB.

(b) The EPSB shall consider the report and the provider's response and make a final determination regarding the approval of the institute.

Section 8. Appeals Process. (1) If a provider seeks appeal of an EPSB decision, the provider shall appeal within thirty (30) days of receipt of the EPSB official notification. A provider shall appeal on the grounds that:

(a) A prescribed standard was disregarded;

(b) A procedure was not followed; or

(c) Evidence of compliance in place at the time of the review and favorable to the provider was not considered.

(2) An appeals panel of no fewer than three (3) members shall be appointed by the EPSB chair from members of the EPSB who do not have a conflict of interest regarding the provider or program. The ad hoc committee shall recommend action on the appeal to the full EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.

Section 9. Data Reports. (1) The EPSB shall maintain data reports related to the following:

(a) Approval status of all EPSB approved expedited route programs;

(b) Contact information for the person responsible for the expedited route program;

(c) Year of last program review;

(d) Tables relating the program total enrollment disaggregated by ethnicity and gender for the last three (3) years;

(e) Tables relating the program faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;

(f) Table of the number of program completers for the last three (3) years;

(g) Table relating pass rates on the required assessments;

(h) Table relating program completer satisfaction with the preparation program; and

(i) Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.

(2) Providers shall report to the EPSB staff at the end of each school year continuous improvement efforts relating to the expedited route program.

Section 10. Professional Certificate. (1) Upon completion of all program requirements of the expedited route, and compliance with the assessment requirements established in 16 KAR 6:010, the resident may apply for the professional certificate.

(2) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue the candidate a professional certificate.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: July 8, 2022

FILED WITH LRC: July 13, 2022 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on September 26, 2022, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 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 administrative regulation establishes the standards and procedures of the Option 9 expedited route to certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the standards and procedures for the Option 9 expedited route to certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.048(10) creates the Option 9 alternative route to certification and KRS 161.048(1)(e) requires the Education Professional Standards Board to promulgate administrative regulations establishing standards and procedures for the alternative certification options.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for providing an Option 9 alternative route to certification program as well as the requirements for candidates of the route to obtain certification.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts, 31 Institutions

of Higher Education with and approved educator preparation program, and applicants for certification.

(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: School districts and educator preparation providers will have to meet the requirements of this regulation and apply to the Education Professional Standards Board to be approved to offer Option 9 programs. Candidates of this route will have to complete the program requirements and apply to the Education Professional Standards Board for Certification upon completion.

(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 fee established by the Education Professional Standards Board in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants to provide a Option 9 program will meet the requirements for approval by the Education Professional Standards Board. Candidates for this route will have access to high quality programs.

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

(a) Initially: The initial cost to implement this regulation will be the implementation of the route, training for staff on the standards and requirements for this new route, and the time and resources for processing and reviewing the applications to provide an Option 9 program. As this is a new route, we are unable to determine the number of applications that will be received.

(b) On a continuing basis: The continuing cost to implement this regulation will be the staff time and resources for processing applications to provide an Option 9 program and applications for certification from program completers. This is a new route, and it is unknown how many applications will be received.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund and certification fees collected pursuant to 16 KAR 4:040.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: At this time, it is not expected that an increase in fees or funding will be necessary for the Education Professional Standards Board to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

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 Education Professional Standards Board, public-school districts, and public institutions of higher education with approved educator preparation programs.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028, KRS 161.030, KRS 161.048.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 will not generate any revenue for the Education Professional Standards Board in the first year. This will not generate revenue for participating school districts but may generate revenue in the form of tuition for

participating institutions of higher education.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Each applicant for certification through this route will have to pay the certification fee established in 16 KAR 4:040. This is a new route, so it is unknown how many applications will be received through it. Certification fees are a part of the Education Professional Standards Board's restricted funds, that in accordance with KRS 161.028 (1)(m) can be used towards the costs of issuance, reissuance, and renewal of certificates, and the costs associated with disciplinary action against a certificate holder. In subsequent years, this will not generate revenue for participating school districts but may generate revenue in the form of tuition for participating institutions of higher education.

(c) How much will it cost to administer this program for the first year? For the first year, cost will be the implementation of the route, training for staff on the standards and requirements for this new route, and the time and resources for processing and reviewing the applications to provide an Option 9 program. As this is a new route, we are unable to determine the number of applications that will be received. There will also be development costs for the school districts and institutions of higher education. Those costs are not established by this regulation but are inherent in the statutory requirements of the route.

(d) How much will it cost to administer this program for subsequent years? For the subsequent years, the cost will be the staff time and resources for reviewing applications to offer an Option 9 program, overseeing the continuous review of providers, processing the applications for certification from route completers and issuing certificates. This will vary depending on the number of applications and certificates, and as this is a new route, we are unable to determine that number. There will also be ongoing costs to the districts to provide mentoring and support to candidates and to the institutions of higher education to offer the needed courses. These costs are not established by this administrative regulation but are inherent in the statutory requirements of the route.

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: At this time, it is unknown how many future educators will pursue this route. Applicants will be required to pay the certification fee established in 16 KAR 4:040. The certification fees collected for these applications will offset the costs of issuance. However, there will be costs to the Education Professional Standards Board for the development and oversight of this route prior to receipt of certification fees. There will also be costs to school districts and institutions of higher education wishing to participate in this route; however, those costs are not created by this regulation but are inherent to the route and its statutory requirements.

(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 anticipated.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None anticipated.

(c) How much will it cost the regulated entities for the first year? There will be initial costs to school districts and institutions of higher education wishing to participate in this route; however, those costs are not created by this regulation but are inherent to the route and its statutory requirements.

(d) How much will it cost the regulated entities for subsequent years? There will be costs to school districts and institutions of higher education wishing to participate in this route; however, those costs are not created by this regulation but are inherent to the route and its statutory requirements.

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)] There is not an expected major economic impact from this regulation as it does not create costs for the Education Professional Standards Board or the regulated entities.

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

105 KAR 1:415. Reimbursement of hospital and medical insurance premiums for Medicare eligible retired members reemployed with a participating employer.

RELATES TO: KRS 16.505, 61.505, 61.510, 61.701, 61.702, 78.510, 78.5536, 42 U.S.C. 1395y(b)

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer group hospital and medical insurance coverage to retired members and some spouses and dependents. This administrative regulation establishes eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a regular full-time position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from March 1, 2017 through September 30, 2022.

Section 1. Definitions.

(1) Unless otherwise defined in this section, the definitions contained in KRS 16.505, 61.510, and 78.510 shall apply to this administrative regulation.

(2) Prior to April 1, 2021, "agency" means the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Effective April 1, 2021, "agency" means the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.

(3) "Boards" means the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System.

(4) "Complete" means all required sections of a form are filled out, the form has been fully executed by the recipient or the recipient's legal representative, and all supporting documentation required by the form is included with the form.

(5) "Eligible spouse and dependents" means spouses and dependent children of MEMs who are eligible to receive all or a portion of their premiums paid for by the Boards in accordance with KRS 61.702 and 78.5536.

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

(7) "MEM" means a Medicare eligible member who is retired and reemployed in a regular full-time position with a participating employer which offers or offered the member a hospital and medical insurance benefit or by a participating employer which is or was prevented from offering a hospital and medical benefit to the member as a condition of reemployment under KRS 70.293, 95.022, or 164.952.

(8) "Monthly contribution rate" means

(a) The amount determined by the Boards as the maximum contribution the systems will pay toward the premium of a retired member who began participating in the systems on or before June 30, 2003; or

(b) For a retired member who began participating in the system on or after July 1, 2003, the amount per month earned by the retired member based on years of service as provided in KRS 61.702(4)(e) and 78.5536(4)(e).

(9) "Premium" means the monthly dollar amount required to provide hospital and medical insurance plan coverage for a recipient, spouse of a retired member, or dependent child.

(10) "Provide" when used in reference to a form or other document, means the agency makes a form or document available on its Web site (if appropriate) or makes a form or document available to a person by mail, fax, secure email, or via Self Service on the Web site maintained by the agency (if available).

(11) "Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.

Section 2. Group Hospital and Medical Insurance Plans Established for MEMs. Beginning October 1, 2022, a KEHP group hospital and medical insurance plan is available for MEMs and the eligible spouses and dependents of MEMs in accordance with KRS 61.702, 78.5536 and 42 U.S.C. 1395y(b).

Section 3. Eligibility for Reimbursement.

(1) A MEM who was informed by the agency that he or she was not eligible for group hospital and medical insurance plan coverage through the systems, and who paid premiums for a group hospital and medical insurance plan for himself or herself as well as his or her eligible spouse and dependent(s) may request reimbursement for those premiums paid during the time period from March 1, 2017 to September 30, 2022 as described in Section 4.

(a) MEMs are not eligible for reimbursement for any portion of premiums paid for themselves, spouses, and dependents on or after October 1, 2022, except as indicated in paragraph (b) of this subsection.

(b) For calendar year 2022 only, MEMs and eligible spouses and dependents of MEMs already enrolled in a hospital and medical insurance plan other than a KEHP group hospital and medical insurance plan may choose to remain on that plan through December 31, 2022 and have his or her reimbursement eligibility period extended to December 31, 2022.

(2) Payment of premiums for a group hospital and medical insurance plan for MEMs and eligible spouses and dependents of MEMs identified in subsection (1) of this section shall be reimbursed upon submission of documentation as described in Section 4 if all or a portion of the MEM, MEM's eligible spouse's or dependent's group hospital and medical insurance coverage would have been paid for by the Boards pursuant to KRS 61.702 and 78.5536.

(3) A MEM shall not be eligible for reimbursement of premiums paid by or on behalf of the MEM or his or her eligible spouse or dependent if:

(a) The MEM was not notified by the agency that he or she was ineligible for group hospital and medical insurance plan coverage through the agency, and

(b) The MEM voluntarily chose to purchase or enroll in a hospital and medical insurance plan not offered by the agency.

Section 4. Request for Reimbursement.

(1) The agency shall provide the Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, to eligible MEMs.

(2) A MEM may request reimbursement for himself or herself,

eligible spouse or dependent(s) by filing Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, which shall include all premiums for the entire time period for which the MEM is requesting reimbursement.

(a) MEMs may begin filing Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, on August 1, 2022.

(b) MEMs shall only file one (1) Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, for each entity that provided hospital and medical insurance coverage for the MEM and his or her eligible spouses and dependents.

(c) Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement shall only be filed once MEMs and MEM's eligible spouse or dependents are no longer paying premiums eligible for reimbursement.

(3)(a) In order to receive the applicable reimbursement, MEMs must file the completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, with one (1) or more of the following proof of payment of premiums for hospital and medical insurance coverage that covers the entire time period for the requested reimbursement:

1. The employer certification of health insurance for medical reimbursement section of Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, completed by an employer to certify premiums paid by the MEM;

2. The insurance agent certification of health insurance for medical reimbursement section of Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, completed by an insurance agency or company to certify the premiums paid by or on behalf of the MEM;

3. A signed statement from the MEM's employer listing dates of hospital and medical insurance coverage amount of premiums deducted from wages and the cost of the single coverage; or

4. A signed statement or invoice from the MEM's insurance company listing the dates and cost of single hospital and medical insurance coverage, along with proof of payment such as a receipt or bank statement clearly indicating payment for the statement or invoice provided.

(b) If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

(4)(a) A completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, must be filed no later than June 30, 2023.

(b) MEMs and eligible spouses or dependents of MEMs for whom a completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, is not on file on or before June 30, 2023 are not eligible for reimbursement, except as provided by subsection (5) of this Section.

(5)(a) If a MEM submits a Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, by the deadline indicated in subsection (4) of this section that is not complete, then the MEM shall have until December 31, 2023 to file a completed Form 6260, including any documentation or proof of payments for the time period the MEM is requesting reimbursement that were missing from the initial incomplete Form 6260.

(b) MEMs and eligible spouses or dependents of MEMs for whom a completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, is not on file on or before December 31, 2023 are not eligible for reimbursement.

(6)(a) If a MEM is deceased, the executor, administrator, or other representative of the MEM's estate may request reimbursement for the MEM, and any eligible spouse or dependents, by filing a Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, and all other required documentation at the retirement office in compliance with this section.

(b) The executor, administrator, or other representative of the MEM's estate shall also file an order appointing the executor, administrator, or other representative of the MEM's estate from a court with jurisdiction that has been entered by the Clerk of the Court or certified by the Clerk of the Court.

(7) If the last day to file a completed Form 6260, Medicare

Secondary Payer Application for Medical Insurance Reimbursement, under this section is a Saturday, Sunday, a public holiday listed in KRS 2.110, a day on which the retirement office is actually and legally closed, or any other state or federal holiday that disrupts mail service, then the deadline shall be satisfied if the completed Form 6260 is on file by the end of the next business day.

Section 5. Funding. Pursuant to KRS 61.701, fund assets shall be dedicated for use toward health benefits, as provided in KRS 61.702 and 78.5536, and as permitted under 26 U.S.C. 105 and 106 of the United States Internal Revenue Code, to retired recipients and employees of employers participating in the systems, including MEMs. Fund assets shall also be dedicated for use toward eligible spouses and dependents of MEMs health benefits as provided in KRS 61.702 and 78.5536. Fund assets shall be used to reimburse eligible MEMs and eligible spouses and dependents of the MEM.

Section 6. Authorized Payments.

(1) The agency shall reimburse premiums paid by a MEM or the spouse of a MEM for a MEM who meets the eligibility requirements of Section 3 of this administrative regulation and the MEM's eligible spouse and dependents for each month between March 1, 2017 and September 30, 2022, except as provided in subsection (2) of this section:

(a) That are included on a timely-submitted, completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, in compliance with Section 4; and

(b) Where documented proof of payment of premiums was filed in compliance with Section 4.

(2) In the case of MEMs who choose to remain on their current hospital and medical insurance plan through December 31, 2022 in accordance with paragraph (1)(b) of Section 3 of this administrative regulation, the agency shall reimburse premiums paid by a MEM or the spouse of a MEM for a MEM who meets the eligibility requirements of Section 3 of this administrative regulation and the MEM's eligible spouse and dependents for each month between March 1, 2017 and December 31, 2022:

(a) That are included on a timely-submitted, completed Form 6260, Medicare Secondary Payer Application for Medical Insurance Reimbursement, in compliance with Section 4; and

(b) Where documented proof of payment of premiums was filed in compliance with Section 4.

(3) The amount the MEM or the estate of the MEM shall receive for each month of premium reimbursements authorized by subsection (1) or (2) of this section shall be the lesser of:

(a) The monthly contribution rate in effect during the calendar year in which the premiums authorized for reimbursement were paid by the MEM or the spouse of the MEM had the MEM been eligible to enroll in the non-Medicare eligible group hospital and medical insurance plan established in accordance with KRS 61.702 and 78.5536, or

(b) The premiums paid by the MEM or the spouse of the MEM for hospital and medical insurance coverage for the MEM and his or her eligible spouse and dependents.

(4)(a) The applicable monthly contribution rate referenced in paragraph (3)(a) of this section shall be based on the MEM's hazardous and nonhazardous service.

(b) The applicable monthly contribution rate referenced in paragraph (3)(a) of this section shall not include the tobacco usage fee for the non-Medicare eligible group hospital and medical insurance plan.

(5)(a) If a MEM or an estate of a MEM receives a payment from the agency that does not qualify for reimbursement in accordance with this administrative regulation, the MEM shall return the payment to the agency at the retirement office.

(b) If the MEM or an estate of a MEM fails to return the payment, the agency may withhold payment from the MEM's monthly retirement allowance payment or take other action to collect on the payment received in error.

Section 7. Incorporated by Reference. (1) Form 6260, "Medicare Secondary Payer Application for Medical Insurance Reimbursement", May 2022, 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, from 8:00 a.m. to 4:30 p.m. This material is also available on the agency's Web site at kyret.ky.gov.

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: June 24, 2022

FILED WITH LRC: June 28, 2022 at 11:50 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, September 27, 2022, at 2:00 p.m. Eastern Time 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 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 September 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: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.NonAdvocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a full-time position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from March 1, 2017 through September 30, 2022.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a full-time position with a participating employer and were informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from March 1, 2017 through September 30, 2022.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer group hospital and medical insurance coverage to retired members and some spouses and dependents. This administrative regulation establishes eligibility requirements and procedures for reimbursements of premiums paid by Medicare eligible retired members who are or were reemployed in a regular full-time position with a participating employer during the period of March 1, 2017 through September 30, 2022, when a group hospital and medical insurance plan was not available for these retired members or their eligible spouses and dependents.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing eligibility requirements, procedures, and necessary documentation and forms for the reimbursement of hospital and medical insurance benefit premiums paid by Medicare eligible retired members who were reemployed in a regular full-time position with a participating employer and were previously informed by the Kentucky Retirement Systems or the Kentucky Public Pensions Authority that they were not eligible for enrollment in an existing group hospital and medical insurance plan through the Kentucky Public Pensions Authority from March 1, 2017 through September 30, 2022.

(2) If 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: Approximately 1100 individuals who are retired members of the systems operated by the Kentucky Public Pensions Authority. An unknown number of spouses and dependents of retired members of the systems operated by the Kentucky Public Pensions Authority. One (1) entity that provides day-to-day operations for the three (3) public retirement systems: the Kentucky Public Pensions Authority. Three (3) public retirement systems: the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Kentucky Public Pensions Authority is required to set-up an internal system for processing and paying the eligible reimbursement requests provided by this administrative regulation. The Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System will be responsible for paying for the eligible reimbursements from the Kentucky Retirement Systems insurance trust fund (KRS 61.702).

(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 for the Kentucky Public Pensions Authority consists solely of the costs associated with implementation of this administrative regulation, which should be minimal. The cost of compliance for the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System is unknown because the cost will be dependent on several factors that are unknown at the time of filing of this administrative regulation: (i) the number of eligible retired members who timely request reimbursement in accordance with this administrative regulation, (ii) the periods during which the affected retired members paid for premiums, and (iii) whether the affected retired members may have had their premiums partially or entirely paid for by an employer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Public Pensions Authority, the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System are able to ensure legal compliance.

(5) Provide an estimate of how much it will cost the administrative body 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 continuing costs associated with the implementation of this administrative regulation should be minimal, particularly after the window for requesting reimbursement closes on June 30, 2023.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority, which will carry out the implementation and enforcement of this regulation pursuant to KRS 61.505, 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: No increase in fees or funding is 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 public retirement systems are treated in the same manner by this administrative regulation.

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 Public Pensions Authority and the three (3) public retirement systems for which it provides day-to-day operations: the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g).

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

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

(d) How much will it cost to administer this program for subsequent years? Unknown.

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

Revenues (+/-): None.

Expenditures (+/-): Unknown.

Other Explanation: The cost of compliance for the Kentucky Public Pensions Authority consists solely of the costs associated with implementation of this administrative regulation, which should be minimal. The cost of compliance for the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System is unknown because the cost will be dependent on several factors that are unknown at the time of filing of this administrative regulation: (i) the number of eligible retired members who timely request reimbursement in accordance with this administrative regulation, (ii) the periods during which the affected retired members paid for premiums, and (iii) whether the affected retired members may have had their premiums partially or entirely paid for by an employer.

(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? Unknown.

(d) How much will it cost the regulated entities for subsequent years? Unknown.

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

Cost Savings (+/-): None.

Expenditures (+/-): Unknown.

Other Explanation: The cost of compliance for the Kentucky Public Pensions Authority consists solely of the costs associated with implementation of this administrative regulation, which should be minimal. The cost of compliance for the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System is unknown because the cost will be dependent on several factors that are unknown at the time of filing of this administrative regulation: (i) the number of eligible retired members who timely request reimbursement in accordance with this administrative regulation, (ii) the periods during which the affected retired members paid for premiums, and (iii) whether the affected retired members may have had their premiums partially or entirely paid for by an employer.

(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" because it will not have a negative or adverse economic impact on the Kentucky Public Pensions Authority or the three (3) public retirement systems for which it provides day-to-day operations (the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System).

KENTUCKY INFRASTRUCTURE AUTHORITY (New Administrative Regulation)

200 KAR 17:111. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.

RELATES TO: KRS 45.031, 151.601, 151.605, 224A.011, 224A.020, 224A.035, 224A.040, 224A.050 -224A.314

STATUTORY AUTHORITY: KRS 224A.040, 224A.070(1), 224A.113, 224A.300

NECESSITY, FUNCTION, AND CONFORMITY: On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses. Effective April 1, 2022, the United States Department of the Treasury issued its final rule for the funds, which necessitates withdrawal of the existing emergency regulation and the promulgation of a new and substantially different emergency regulation. KRS 224A.040 authorizes the Kentucky Infrastructure Authority to make grants as funds are available, and KRS 224A.070(1) authorizes the Kentucky Infrastructure Authority to promulgate administrative regulations that shall define with specificity conditions precedent under which applications for loans or grants may be made and the order of priority upon which applications shall be acted upon. Senate Bill 36, 2021 Regular Session Acts of the General Assembly, Chapter 195, requires the Authority to promulgate administrative regulations to ensure that project approvals are based on rational criteria and include a project's readiness to proceed and the project's social, economic, and environmental benefits. This administrative regulation establishes procedures for the application for and

provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority.

Section 1. Definitions.

(1) "Applicant" means a governmental agency that has submitted an application to the Authority for a grant from Authority funds.

(2) "Application" means the project information contained within the Water Resource Information System Project Profile and designated by an applicant as applying for a grant from the Drinking Water and Wastewater Grant Program funds.

(3) "Authority" means the Kentucky Infrastructure Authority, which is created by KRS Chapter 224A.

(4) "Conditional commitment letter" means a letter delivered to the applicant stating the Authority's commitment to provide a grant under specifications and subject to the satisfaction of certain conditions by the applicant.

(5) "Kentucky State Clearinghouse" means the project review mechanism, attached to the Department for Local Government, established in KRS 45.031.

(6) "Kentucky Uniform System of Accounting" means the elements of a basic accounting system established in KRS 224A.306, which is used by a water or wastewater system seeking or using funds of the Authority if an alternative accounting system has not been approved by the Authority.

(7) "Project" means an infrastructure project related to drinking water or wastewater.

(8) "Unserved" means a customer who does not have access to publicly available potable drinking water or a properly functioning wastewater system.

Section 2. Eligible Costs Timeline.

(1) Applicants may use funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the funds were incurred by the Applicant after March 3, 2021.

(2) Applicants may use funds to cover eligible costs incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026.

Section 3. Eligible Projects.

(1) Funds available to the Authority shall be used to fund Projects that make necessary investments in water or sewer infrastructure as defined in 31 CFR Part 35.

(2) Only water or wastewater projects addressing one (1) or more of the conditions established in paragraphs (a) through (h) of this subsection shall be eligible for funding:

(a) The proposed project shall provide drinking water services to unserved rural customers.

(b) The proposed project shall address provisions in a federal consent decree related to water or wastewater.

(c) The proposed project shall address the provisions of KRS 224A.300 - 224A.314.

(d) The proposed project shall address an emergency situation.

(e) The proposed project shall alleviate existing conditions that pose a serious and immediate threat to the health and welfare of the community.

(f) The proposed project shall promote social, economic, or environmental benefits; but with respect to industrial sites funds may only be awarded if the site has committed occupants.

(g) Funds are needed to complete a funding package previously awarded by the Authority.

(h) Funds are needed to cover cost overrun for a project previously awarded by the Authority.

(3) Project applications meeting the guidelines established in subsection (2) shall be funded based on the Project's:

(a) Readiness to proceed;

(b) Social, economic, and environmental benefits; and

(c) Receipt of a Project approval from a water management planning council as created in KRS 151.601.

Section 4. Applications.

(1) Each applicant shall submit an application to the Authority by requesting that the water service coordinator, as established in KRS 151.605, designate the project for funding. If a water service coordinator is not available, the request may be made directly to the Authority in writing and mailed.

(2) The Authority shall request additional information about the project or the applicant if needed to comply with local, state, or federal laws.

(3) Only a completed application, including all supporting documentation, shall be considered for financial assistance from the Drinking Water and Wastewater Grant Program.

Section 5. Project Priority. Eligible projects shall be funded subject to:

(1) A project's readiness to proceed;

(2) A project's social, economic, and environmental benefits;

(3) The water management council's approval; and

(4) The availability of funds.

Section 6. Additional Conditions to Project Funding.

(1) A water supply and distribution system seeking funding for a Project shall agree, in writing, to adopt and utilize the Kentucky Uniform System of Accounting and to charge rates for services based on the actual cost of that service.

(2) Before funds shall be disbursed to an applicant whose Project has been approved for funding, the applicant shall demonstrate to the Authority that the project:

(a) Has been reviewed through the Kentucky State Clearinghouse process; and

(b) Is in compliance with applicable state and federal requirements.

Section 7. Terms of Financial Assistance.

(1) An application for funding shall be:

(a) Subject to financial viability review by Authority staff; and

(b) Referred to the Authority chair for final action.

(2) A project shall be funded if approved by the Authority chair and reviewed by the Legislative Research Commission's Capital Projects and Bond Oversight Committee.

(3) Upon approval of an application for funding of a project, the Authority shall issue a conditional commitment letter to the applicant establishing the requirements to be satisfied by the applicant prior to execution of an assistance agreement, including:

(a) Accounting standards or financial reporting conditions;

(b) Rate covenants;

(c) Other federal or state legal requirements relating to the project or the applicant;

(d) Engineering or technical requirements; and

(e) Receipt of additional funding commitments from other sources.

(4) Financial assistance by the Authority shall be made available only upon:

(a) Execution of an assistance agreement; and

(b) Satisfaction by the applicant of the conditions established in the conditional commitment letter.

(5) A grant amount may be adjusted by up to ten (10) percent from the principal amount approved without further action if:

(a) Requested by an applicant; and

(b) The staff of the Authority finds that:

1. The additional requested amount is needed for the project; and

2. Adequate funds are available.

(6) The Authority shall monitor the assistance agreements and require that financial reports be made available to the Authority by the applicant.

(7) The Authority may collect an administrative fee of one-half (1/2) of one (1) percent charged on the principal grant amount, as allowed by law. This fee shall be applied to the administrative processing servicing costs of the grants and necessary operating expenses of the program.

DENNIS KEENE, Chair

APPROVED BY AGENCY: June 21, 2022

FILED WITH LRC: June 21, 2022 at 12:40 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 27, 2022, at 10:00 a.m. at 100 Airport Road, 3rd Floor, Frankfort, KY 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2022, at 11:59 p.m. 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: Matt Stephens, Executive Director, Department for Local Government, 100 Airport Road, 3rd Floor, Frankfort, KY 40601; phone 502-564-0318; fax 502-227-8691; email Matt.Stephens@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Matt Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority through the Drinking Water and Wastewater Grant Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance to applicants for grants, and to ensure that the application, review, and awarding of grants is in accordance with all applicable laws. The United States Department of the Treasury issued its final rule, effective April 1, 2022, necessitating the withdrawal of the existing emergency regulation and the promulgation of a new and substantially different emergency regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to Regular Session 2021 SB 36 and Regular Session 2022 HB 1, which provides guidelines for the grants, by incorporating its guidelines and definitions throughout.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will assist in the effective administration of the statutes by providing applicants with a consistent procedure for providing the statutorily required information needed to administer the grant program. It will also aid the Kentucky Infrastructure Authority (KIA) in its administration of the program by creating a written process to analyze potential Water and Wastewater Infrastructure projects requesting grant funds.

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

(a) How the amendment will change this existing administrative regulation: This is a new regulation and will not change any existing administrative regulation.

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

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

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All governmental agencies, including cities, and private sector entities seeking grant funds for the

construction of Water and Wastewater Infrastructure in the Commonwealth will be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As a result of this regulation, those governmental agencies and private sector entities will be provided guidance as to how to apply for state grant funds. In order to comply with the regulation, they will be required to provide documentation regarding their proposed construction or improvements required by legislation. This will require the submission of documents and may require advice from an accounting professional.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The expense for the administrative and financial expenses are estimated to be minimal and will only apply to those wishing to request funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to successful applicants are immeasurable. Access to clean drinking water and the treatment of wastewater will greatly improve quality of life for Kentucky citizens and create a more suitable business environment for existing and potential job creators.

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

(a) Initially: The expense for the KIA initially will consist of creating new processes for analyzing grant applications. This may require new computer software and will certainly require the time of staff members.

(b) On a continuing basis: On a continuing basis, staff will continue to be utilized, and computer systems will need upgraded as needed.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of grant funding for this program is entirely federally funded.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: In order to implement this regulation, some additional fees and funding may be necessary. This funding will be for the creation of software and use of staff resources. It remains to be seen what that amount may be needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established by this regulation.

(9) TIERING: Is tiering applied? No tiering is applied. Pursuant to the relevant legislation, the funds will be appropriated to those projects based upon population, unserved rural customers, or local governmental agencies under consent decrees. In following that requirement, no tiering is necessary.

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 has the potential to impact all level of state and local government, including cities, counties, and special purpose governmental entities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation relates to providing grant money for the building of water and wastewater infrastructure. SB 36 requires 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. The effect to expenditures on state government include the

administrative duties required by the Kentucky Infrastructure Authority. Those expenses should be minimal. The effect to revenues to local governments is indeterminable.

(a) How much 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 difficult to estimate the amount of revenue this administrative regulation will generate for state and local government for the first year since construction times are unknown. However, jobs can be assumed to be created relating to the construction of water and wastewater infrastructure. Also, this regulation allows local governments to be given construction costs for approved infrastructure projects. State government will receive benefits from any taxes as a result of infrastructure construction.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? In subsequent years, the construction and repair of water and wastewater infrastructure has the potential to create an unknown number of employment and educational opportunities. Access to proper water and wastewater infrastructure is considered to be necessary for any business venture. The potential for revenue is indeterminable.

(c) How much will it cost to administer this program for the first year? The costs of this regulation for the first year will include the administrative expenses required in order to provide the necessary information to the Kentucky Infrastructure Authority.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the administrative costs will remain the same, but, since this is a voluntary program, those costs should be outweighed by the benefits.

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 have a substantial impact on expenditures, while having a cost savings for 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 have a substantial impact on expenditures, while having a cost savings for the regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? The cost savings for subsequent years are interminable. However, most entities will realize a cost saving for many years due to improved infrastructure.

(c) How much will it cost the regulated entities for the first year? The entities will have minimal administrative costs.

(d) How much will it cost the regulated entities for subsequent years? The entities will have minimal administrative cost in subsequent years.

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

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 will not have a negative or adverse major economic impact. This program will have a positive fiscal impact on state and local governments by providing employment opportunities and should lower expenses for providing clean drinking water and

wastewater systems. The social and environmental impacts due to enhanced sanitation should have a positive fiscal impact as well. The expenditures by local governments will be funded by the federal grant money which is the subject of this regulation.

BOARDS AND COMMISSIONS

Board of Cosmetology

(New Administrative Regulation)

201 KAR 12:290. Permits.

RELATES TO: KRS 317A.020, 317A.050, 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060

requires the board to promulgate administrative regulations governing permits in threading, makeup artistry, eyelash artistry, homebound care, and event services. This administrative regulation establishes procedures for permits.

Section 1. Fees. Permit fees are set forth in 201 KAR 12:260.

Section 2. Changes. All changes to account information required for licensure shall be submitted to the board within thirty (30) days of occurrence including:

- (a) Legal name change;
- (b) Change of address;
- (c) Change of facility or employer;
- (d) Change of phone number;
- (e) Change of email address; and
- (f) Any other information as required by KRS 317A or 201 KAR Chapter 12 for licensure.

Section 3. Prior Felony Convictions. An applicant for any permit issued or conducted by the board convicted of a prior felony shall include with his or her application:

- (1) A signed letter of explanation from the applicant;
- (2) A certified copy of the judgment and sentence from the issuing court; and
- (3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.

Section 4. All incorporated forms may be replicated in a digital format for online completion.

Section 5. Threading and Makeup Artistry Permits. (1) Any person who engages in the practice of threading or makeup artistry shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

- (a) A copy of the applicant's government-issued photo identification;
- (b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;
- (c) Proof of completion of a board approved sanitation course within the six (6) month period preceding the application.

Section 6. Eyelash Artistry Permits. (1) Any person who engages in the practice of eyelash artistry shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

- (a) A copy of the applicant's government-issued photo identification;
- (b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;
- (c) Proof of completion of a board approved sanitation course within the past six (6) month period preceding the application; and
- (d) Proof of completion of a board approved eyelash certificate training program taught by a licensed instructor within the preceding six (6) months.

Section 7. Homebound Care Permit. (1) Any person engaging in the cosmetic care of a homebound or medically infirm individual shall first obtain a permit from the board by submitting a completed application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

(a) A copy of the applicant's government-issued photo identification;

(b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;

(c) Proof of ownership, employment, or booth rental agreement with a Kentucky board licensed salon;

(d) Medical release document for the homebound or infirm individual from a physician, licensed by the Kentucky Board of Medical Licensure, defining which services can or cannot be safely provided.

(e) The address of the location services will be provided.

Section 8. Event Services Permit. (1) Any person engaged in providing on site services outside of a board licensed facility for events shall first obtain a permit from the board by submitting a completed application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

(a) A copy of the applicant's government-issued photo identification;

(b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;

(c) Proof of ownership, employment, or booth rental agreement with a Kentucky board licensed salon;

(d) The address of the location services shall be provided to the board two (2) weeks in advance of each event along with the time frame services will be provided.

Section 9. Practice before Permit Issuance Prohibited. Any individual found engaging in the practice of threading, makeup artistry, eyelash artistry, or providing homebound care or event services prior to the permit issuance shall be ineligible to receive a permit from the board for a period of one (1) year from the date of the unauthorized practice and be responsible for the payment of any fines ordered by the board.

Section 10. Duplicate Permit, Renewal, and Restoration.

(1) If a permit is lost, destroyed, or stolen after issuance, a duplicate permit may be issued. The permit holder shall submit a statement verifying the loss of the permit using the Duplicate License Application that includes a copy of a government-issued photo identification and pay the duplicate permit fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

(2) The annual license renewal period is July 1 through July 31. All permits shall:

(a) Be renewed using the board's online portal;

(b) Include the required copy of a government-issued photo identification;

(c) Include payment of the fee set forth 201 KAR 12:260;

(d) Include payment of any outstanding fines associated with a prior disciplinary action as described in KRS 317A.145;

(e) Disclose to the board the current name and license number of the facility where the permit holder is working; and

(f) Upload a current passport style headshot photo.

(3) To restore an expired permit, a Restoration Application shall be digitally submitted to the board with payment of the restoration fee as set forth in 201 KAR 12:260 for each year the permit has been expired, the total of which shall not exceed \$300 per permit restored, along with a copy of a government-issued photo identification.

Section 11. Eyelash Artistry Training Programs. (1) An eyelash training program may be approved by the board upon submission of;

(a) A written request for consideration;

(b) A copy of the applicant's government-issued photo identification;

(c) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;

(d) A copy of the Kentucky cosmetology or esthetics instructor license verifying the credentials to teach the course; and

(e) A completed training manual with detailed instructions on safety, infection control, eye diseases, contraindications, application and removal procedures, and product knowledge. Manual shall also contain current Kentucky Statutes and Regulations on scope of practices, requirements for facility and personal licensure, and infection control standards.

(f) A copy of a training contract that outlines the responsibility of the training company, cost for classes, and completion requirements.

(2) Failure to seek approval as required by subsection (1) of this section shall invalidate all certifications issued to trainees and submitted by permit applicant.

(3) An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor while providing any instruction for students. "Immediate supervision" in this instance means a licensed instructor is physically present in the same room and overseeing the activities of the apprentice instructor at all times.

(4) A licensed cosmetology or esthetics school may seek course approval by submitting a curriculum packet for review and providing proof instructor has appropriate credentials to train in eyelash artistry.

Section 12. Eyelash Training Course Administration. (1) Upon board approval as an eyelash artistry training program the instructor or program director shall ten (10) business days prior:

(a) Submit to the board the date and time of the training course;

(b) Submit a class roster of anticipated attendees;

(c) Provide a copy of the completed contract for each attendee; and

(d) Upon completion of the reported course a signed and dated roster of attendees shall be submitted.

(2) Any student not listed with a signature on the class roster may be considered absent and may not be considered for a permit to practice from the board.

Section 13. Demonstration Permits. Professional services performed outside a licensed facility including charity events and hair shows may have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Permit Application", July 2022; and

(b) "Demonstration Permit Application", July 2022

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Margaret Meredith, Chair, Board of Cosmetology

APPROVED BY AGENCY: July 12, 2022

FILED WITH LRC: July 12, 2022 at 3:04 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022, at 11:30am, at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S, Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: Regulation sets up requirements and processes necessary to receive a KBC permit as defined and changed in RS22 SB 113.

(b) The necessity of this administrative regulation: Portions of regulation previously resided in the licensing regulation 201 KAR 12:030 but with the addition of more permit types all permit details were moved to a new regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317A requires the board to promulgate regulations on all areas of cosmetology practice for licensing and permits as defined.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets the parameters for training, program approval, and permit issuance for the board regulated permits.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KBC currently regulates more than 35,000 licenses and permits. The number of incoming practitioners varies and there is no way to determine the possible applicants. Currently there are less than 1000 permits in the KBC system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulations already exist to set details and steps to attain a permit with KBC- this regulation expands that information to include the new permit items of homebound care and event services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fees are set in a separate regulation and many items already exist. The fee associated is \$100 or less for each type of permit needed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include increased safety to the public and flexibility to work in situations where a licensed facility is not readily available to the parties. It assists in the care of medically infirm homebound individuals inside their home

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

(a) Initially: No additional cost to implement

(b) On a continuing basis: No additional cost to maintain at this time

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency operates strictly on restricted funds provided by licensing fees. This would be cohesive with that model.

(7) Provide an assessment of whether an 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 adjustment in fees outside the addition of a fee for the actual permit would be necessary.

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

already in 201 KAR 12:030 had a fee schedule indicated for them previously and new items have similar fees per KRS 317A authority.

(9) TIERING: Is tiering applied? Tiering is not used in this agency.

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? Kentucky Board of Cosmetology is the only agency affected. No other areas of state or local government are affected by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A is the only statute that authorizes this action.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no expenditures needed or required by other agencies.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is a possibility of local occupational or income taxes to be collected as more individuals are placed in the workforce with these permits.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There is a possibility of income taxes to be collected as more individuals are placed in the workforce with these permits

(c) How much will it cost to administer this program for the first year? It will not cost any additional revenue for state or local governments.

(d) How much will it cost to administer this program for subsequent years? It will not cost any additional revenue for state or local governments.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: 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. There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

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

(c) How much will it cost the regulated entities for the first year? There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

(d) How much will it cost the regulated entities for subsequent years? There will be a balanced cost to expenditures to the regulating agency to oversee the items in this regulation at this time.

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

Cost Savings (+/-): N/A

Expenditures (+/-): N/A

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)]. There will not be any major economic impact for any entities.

GENERAL GOVERNMENT
Department of Agriculture
Office of the Consumer and Environmental Protection
(Repealer)

302 KAR 27:011. Repeal of 302 KAR 27:010, 302 KAR 27:020, 302 KAR 27:040, 302 KAR 27:050, and 302 KAR 27:060.

RELATES TO: KRS Chapter 217B, 217B.120, 40 C.F.R. 156, 170, 171, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060, 217B.105(7), 217B.193, 217B.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050, KRS 217B.060, KRS 217B.105, and KRS 217B.193 collectively authorize the Kentucky Department of Agriculture to establish and determine rules and regulations for the use, recordkeeping, storage, modification and certification of pesticides in Kentucky. This administrative regulation repeals 302 KAR 27:010, 302 KAR 27:020, 302 KAR 27:040, 302 KAR 27:050, and 302 KAR 27:060 because these regulations migrated to 302 KAR Chapter 26.

Section 1. The following administrative regulations hereby repealed:

- (1) 302 KAR 27:010. Definitions for 302 KAR Chapter 27;
- (2) 302 KAR 27:020. General provisions;
- (3) 302 KAR 27:040. Pesticide licenses for prison inmates;
- (4) 302 KAR 27:050. Pesticide certification and licensing; and
- (5) 302 KAR 27: 060. Fine schedule for violation of KRS 217B.120.

RYAN F. QUARLES, Commissioner of Agriculture

APPROVED BY AGENCY: July 13, 2022

FILED WITH LRC: July 13, 2022 at 12:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022, at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This regulation repeals unneeded pesticide regulations.
 - (b) The necessity of this administrative regulation: This regulation repeals pesticide regulations that will be met with another filing.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217 commands the KDA to establish administrative regulations for pesticides. That command is now being met with another filing.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making rules clear for storage and handling of pesticides in Kentucky.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative

regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 19,750 entities that are licensed and registered by the KDA as well as persons not registered.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the instructions in the remaining applicable regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fees are not included in this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: The KDA estimates \$2,180,000 total annually.
 (b) On a continuing basis: The KDA estimates \$2,180,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees, fines, federal grants and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same 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? Kentucky Department of Agriculture shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 363.900-908

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 income will be generated by this repealer.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No income will be generated by this repealer.

(c) How much will it cost to administer this program for the first year? Program costs are approximately \$700,000.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the egg program as a whole.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

(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? Cost savings for regulated entities will be minimal or non-existent. This repeal has been preceded with new filings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will be minimal or non-existent. This repeal has been preceded with new filings.

(c) How much will it cost the regulated entities for the first year? Cost increases for regulated entities will be minimal or non-existent. This repeal has been preceded with new filings.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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 KDA expects no economic impact from this repealer.

GENERAL GOVERNMENT Department of Agriculture

Office of the Consumer and Environmental Protection (Repealer)

302 KAR 28:011. Repeal of 302 KAR 28:010, 302 KAR 28:020, 302 KAR 28:030, 302 KAR 28:040, 302 KAR 28:050, and 302 KAR 28:060.

RELATES TO: KRS Chapter 217B, 217B.120, 40 C.F.R. 156, 170, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060, 217B.193, 217B.585, 217B.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050, KRS 217B.060, and KRS 217B.193 collectively authorizes the Kentucky Department of Agriculture to determine the rules and administrative regulations for ornamental and interior plantscape posting as well as the certification for pesticide licenses in Kentucky. The administrative regulation repeals 302 KAR 28:010, 302 KAR 28:020, 302 KAR 28:030, 302 KAR 28:040, 302 KAR 28:050, and 302 KAR 28:060 because these regulations have migrated to 302 KAR Chapter 26.

Section 1. The following administrative regulations hereby repealed:

- (1) 302 KAR 28:010. Definitions for 302 KAR Chapter 28;
- (2) 302 KAR 28:020. General provisions;
- (3) 302 KAR 28:030. Ornamental and interior plantscape posting;
- (4) 302 KAR 28:040. Pesticide licenses for prison inmates;
- (5) 302 KAR 28:050. Pesticide certification and licensing; and
- (6) 302 KAR 28:060. Fine schedule for violation of KRS 217B.120.

RYAN F. QUARLES, Commissioner of Agriculture
APPROVED BY AGENCY: July 13, 2022
FILED WITH LRC: July 13, 2022 at 12:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals ornamental and interior plantscape posting regulations as well as pesticide certification regulations.

(b) The necessity of this administrative regulation: This regulation repeals unneeded pesticide license regulations. Other filings prior in time created our current program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217 commands the KDA to establish administrative regulations for pesticide handling, storage and licensing. That command is now being met with another filings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making rules clear for pesticide licenses in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 19,750 entities that are licensed or registered by the KDA as well as persons not registered.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the instructions in the remaining applicable regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fees are not included in this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: The KDA estimates \$2,180,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$2,180,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees, fines, federal grants, and the KDA general fund.

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

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same 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? Kentucky Department of Agriculture shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 363.900-908

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 income will be generated by this repealer.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No income will be generated by this repealer.

(c) How much will it cost to administer this program for the first year? Program costs are approximately \$700,000.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the egg program as a whole.

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

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation:

(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? Cost savings for regulated entities will be minimal or non-existent. This repeal has been preceded with new filings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will be minimal or non-existent. This repeal has been preceded with new filings.

(c) How much will it cost the regulated entities for the first year? Cost increases for regulated entities will be minimal or non-existent. This repeal has been preceded with new filings.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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 KDA expects no economic impact from this repealer.

GENERAL GOVERNMENT Department of Agriculture Office of the Consumer and Environmental Protection (Repealer)

302 KAR 29:011. Repeal of 302 KAR 29:010, 302 KAR 29:020, 302 KAR 29:040, 302 KAR 29:050, 302 KAR 29:060, and 302 KAR 29:070.

RELATES TO: KRS CHAPTER 217B, 217B.190, 217B.515, 217B.520, 217B.525, 217B.545, 217B.550, 217B.585, 7 U.S.C 136, 136I, 49 U.S.C 51

STATUTORY AUTHORITY: KRS 13B.070(3), 217B.050, 217B.060, 217B.193, 217B.530, 217B.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050, KRS 217B.060, KRS 217B.515 and KRS 217B.990 collectively authorize the Kentucky Department of Agriculture to establish rules and regulations for licensure and practice of commercial structural pest control and fumigation. This also authorizes the department to establish classifications of pesticide licenses and commencement of settlement proceedings. This administrative regulation repeals 302 KAR 29:010, 302 KAR 29:020, 302 KAR 29:040, 302 KAR 29:050, 302 KAR 29:060, and 302 KAR 29:070 because these regulations migrated to 302 KAR Chapter 26.

Section 1. The following administrative regulations hereby repealed:

- (1) 302 KAR 29:010. Definitions for 302 KAR Chapter 29;
- (2) 302 KAR 29:020. General provisions for structural pest control;
- (3) 302 KAR 29:030. Hearings to determine suspension, modification or revocation of license;
- (4) 302 KAR 29:040. Settlement proceedings;
- (5) 302 KAR 29:050. Commercial structural pest control and fumigation;
- (6) 302 KAR 29:060. Certification; and
- (7) 302 KAR 29:070. Fine schedule for violation of KRS 217B.550.

RYAN F. QUARLES, Commissioner of Agriculture

APPROVED BY AGENCY: July 13, 2022

FILED WITH LRC: July 13, 2022 at 12:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals pesticide certification and regulations.

(b) The necessity of this administrative regulation: This regulation repeals pesticide regulations. Other filings prior in time created our current program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217 commands the KDA to establish administrative regulations for the storage and handling of pesticides.

That command is now being met with two other filings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making rules clear for pesticide use and storage in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects pesticide sellers, and applicators in Kentucky. This includes individuals and government agencies that chose to apply pesticides. Approximately 19,750 entities are currently licensed or registered by the KDA, although the filing does affect persons not regulated as well.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons selling or using pesticides as defined in the commonwealth shall need to comply with the minimum standards laid out in this KRS 217.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fees are not included in this repealer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: The KDA estimates \$2,180,000 total annually.

(b) On a continuing basis: The KDA estimates \$2,180,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of fees, fines, federal grants and the KDA general fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: NO costs are associated with this filing.

(9) TIERING: Is tiering applied? No. All regulated entities have the same 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? State agencies, county and city government units, including but not limited to, highway and road departments, parks departments, maintenance departments, and school districts, that employ persons as pesticide applicators.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. and 40 CFR 171. KRS 217B.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 income will be

generated by this repealer.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No income will be generated by this repealer.

(c) How much will it cost to administer this program for the first year? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the pesticide programs authorized by KRS 217B and this regulation is approximately \$2,180,000. This includes testing for certification and licensure, issuing licenses, authorizing continuing education unit hours, and pesticide misuse enforcement. Salaries and fuel costs may drive total costs higher in coming years.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

(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? Cost savings for regulated entities will be minimal. This repeal has been preceded with new filings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for regulated entities will be minimal. This repeal has been preceded with new filings.

(c) How much will it cost the regulated entities for the first year? Cost increases for regulated entities will be minimal. This repeal has been preceded with new filings.

(d) How much will it cost the regulated entities for subsequent years? The KDA expects costs in subsequent years to be flat, not changing nor increased.

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 KDA expects no economic impact from this repealer.

TRANSPORTATION CABINET Department of Highways Division of Planning (New Administrative Regulation)

603 KAR 5:350. Off-highway vehicles, safety, and routes.

RELATES TO: KRS 12.020, 148.0222, 174.020, 189.281, 189.390, 189.515, 189.520, 304.39-110, 16 C.F.R. sec. 1420.3

STATUTORY AUTHORITY: KRS 189.281

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.281 requires the cabinet to promulgate administrative regulations relating to the local government pilot program for off-highway vehicles (OHV). This administrative regulation establishes the criteria for OHV ordinances, petitions, and the rescinding thereof, OHV enforcement requirements, and OHV safety plan requirements

and establishes the OHV safety requirements and the safety equipment verification protocol. This administrative regulation shall expire on July 1, 2024, pursuant to KRS 189.281.

Section 1. Definitions.

(1) "Agreement" means the written document executed by the designees of the local government and the cabinet, detailing the terms and conditions of OHV use on designated state owned or maintained highways.

(2) "Business district" is defined by KRS 189.390(1)(a).

(3) "Cabinet" means the Transportation Cabinet.

(4) "Local government" is defined by KRS 189.281(1)(a).

(5) "Off-highway vehicle" or "OHV" is defined by KRS 189.281(1)(b).

(6) "Regional authority" is defined by KRS 189.281(1)(c).

(7) "State highway" is defined by KRS 189.390(1)(c).

Section 2. Local Government Pilot Program Ordinance Related to OHVs.

(1) As established in KRS 189.281(2)(a), a local government may petition the Transportation Cabinet to authorize and regulate the use and operation of OHVs on state highways or sections of state highways located within the local government's jurisdictional boundaries. Before the local government may file a petition, the local government shall first adopt an OHV ordinance. Procedures for adopting an OHV ordinance are stated in KRS 189.281(2)(b)(1)(2)(3). All statutory requirements regarding proposed OHV ordinance shall be met.

(2) Pursuant to KRS 189.281(3), a fully controlled access highway shall not be designated or otherwise adopted in any OHV ordinance.

Section 3. Local Government Petition for OHV use on State Highways.

(1) A local government seeking to include state highways as part of the local government's proposed OHV ordinance pursuant to KRS 189.281(2)(c) and Section 2 of this administrative regulation shall submit a petition as required by KRS 189.281(2)(c)(1-6).

(2) A completed petition shall be submitted to the Transportation Cabinet District Office where the local government is geographically located.

(3) The District Office, Chief District Engineer shall review the petition along with supporting documentation required by KRS 189.281(2)(c). If the petition is found deficient, the local Chief District Engineer shall return the petition to the local government with a written explanation of the petition defects. The local government shall correct the petition defects and re-submit the petition to the district office. If the petition defects are not corrected, the petition shall not be deemed as being filed. If the petition is completed properly with required documentation, the Chief District Engineer, shall verify and forward the completed petition to the State Highway Engineer for review.

(4) Within ninety (90) days of a properly filed and completed petition from a local government, the Transportation Cabinet, through the State Highway Engineer's Office shall notify the local government as to whether the petition has been approved or if the petition is deficient. The ninety (90) day period shall not begin to run, until the properly completed petition is filed. Deficient petitions shall not be deemed as being filed until corrected and re-submitted.

(5) If petition is approved, the local government, through its designee shall enter into an agreement with representatives of the Transportation Cabinet detailing the terms and conditions of the proposed route use. The agreement effective date is the date fully executed.

(6) Once the agreement is executed the proposed locations shall be forwarded to the Central Office, Division of Planning for placement on the OHV Route Network.

(7) Agreements shall be eligible to be renewed at the request of the local government on an annual basis.

(8) If the petition is denied, the Transportation Cabinet shall provide the Petitioner with the cause of the denial.

(9) In addition to the fully executed agreement, the local government shall establish an enforcement plan to ensure that all

OHVs operating on roadways under this section meet all requirements outlined in KRS 189.281, which shall:

(a) List the local enforcement agencies involved;

(b) Detail the inspection process;

(c) Adopt a safety plan for OHV use;

(d) Be responsible for monthly inspection of state and local OHV signage; and

(e) Develop a recording and reporting mechanism to report ongoing crashes, collisions, injuries, and other events that relate to safety or failures regarding the operation of OHV vehicles on routes designated.

Section 4. Agreements or Approved Petitions may be Rescinded.

(1) Approved petitions and agreements may be rescinded for the following reasons:

(a) The petition contains fraudulent or misleading information that would have resulted in the petition being denied;

(b) Noncompliance with any requirements set forth in KRS 189.281, this administrative regulation, or the agreement itself; or

(c) Crash history, unforeseen circumstances, public safety, or any other reason deemed necessary to protect the public or the interests of the cabinet.

(2) If the approved petition is rescinded prior to entry of the agreement, or if an executed agreement is in place, the cabinet shall provide written explanation as to why the approved petition or existing agreement is now rescinded.

Section 5. Minimum Vehicle Requirements.

(1) All petitions submitted to the cabinet for approval shall adopt and enforce the definition of an OHV.

(2) All petitions to the cabinet for approval shall include an enforcement plan to ensure that OHVs operating on proposed roadways and trails conform with the vehicle standards established in KRS 189.281(1)(b), and this administrative regulation, and that required insurance coverage is verified.

Section 6. Route Requirements and Standards. As established in KRS 189.281(3), a fully controlled access highway shall not be designated for OHV use. Any petition to the cabinet naming a fully controlled access highway shall be denied.

Section 7. Incorporation by Reference.

(1) "TC 59-112, OHV Safety Plan", July 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Department of Highways, 6th Floor, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. EST.

JIM GRAY, Secretary

JAMES E. BALLINGER, State Highway Engineer

APPROVED BY AGENCY: July 14, 2022

FILED WITH LRC: July 14, 2022 at 12:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022, at 1:00 p.m. EST, at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. EST on August 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: Jon Johnson, Staff Attorney Manager / Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 782-8180, fax (502) 564-5238, email Jon.Johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation relating to the local government pilot program for off-highway vehicles (OHV) establishes the criteria for OHV ordinances, petitions, and the rescinding thereof, OHV enforcement requirements, and OHV safety plan requirements and establishes the OHV safety requirements and the safety equipment verification protocol. This pilot program and administrative regulation shall expire on July 1, 2024, pursuant to KRS 189.281.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189.281 to establish standards for OHV ordinances, enforcement, safety and safety verification protocol.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by providing guidelines for local governments to pass OHV ordinances, and to petition the Cabinet to use portions of state owned and maintained roads for OHV use. This regulation establishes criteria for OHV safety plan, OHV enforcement requirements, and OHV safety protocol and verification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189.281 in relation to approved OHV routes.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is new and is not an amendment to an existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is new and is not an amendment to an existing administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is new and is not an amendment to an existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is new and is not an amendment to an existing 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: Local governments, which means a city, county, charter county government, urban-county government, consolidated local government, or unified local government that is located within the boundaries of a regional authority, or the Kentucky Mountain Regional Authority established under KRS 148.0222, acting on behalf of a local government that part of the authority. Owners and operators of OHV vehicles, passengers; Kentucky State Police and KSP sub-grantees; other local law enforcement, emergency services, Kentucky Transportation Cabinet.

(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: This administrative regulation establishes requirements for local governments to pass ordinances for OHV use along with general procedures for safety plans, and safety equipment verification. This regulation allows the local government to petition the Cabinet to allow use of state owned or maintained

roads. All law enforcement and emergency services will be available to assist in enforcement and safety in relation to OHV use or operation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs may occur to the local governments that get involved with the pilot program. These costs will only occur if the local government chooses to participate in this pilot program. Other costs associated with signage and enforcement have not yet been determined.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation will allow safe operation of OHV vehicles at designated areas throughout the Commonwealth of Kentucky.

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

(a) Initially: Costs cannot be determined at this time.

(b) On a continuing basis: Costs cannot be determined at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are known costs associated with KRS 189.281(10). These will be paid with district traffic 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: Unknown at this time.

(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? No tiering is required under any law nor is it necessary for proper application of the law.

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? Kentucky State Police and KSP sub-grantees; Kentucky Transportation Cabinet, and local governments as defined by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189.281.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is unknown at this time.

(b) How 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 is unknown at this time.

(c) How much will it cost to administer this program for the first year? This is unknown at this time, however, there will be associated costs with petition review and signage.

(d) How much will it cost to administer this program for subsequent years? This is unknown at this time, however, there will be associated costs with petition review and signage.

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

Revenues (+/-): Revenues are unknown at this time.

Expenditures (+/-): Expenditures are unknown at this time.

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. The effect of expenditures and costs savings for the first full year is unknown at this time.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Cost savings for the first year are unknown at this time.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Cost savings for subsequent years are unknown at this time.

(c) How much will it cost the regulated entities for the first year? This is unknown, but all costs will be voluntary because local governments do not have to participate in this pilot program.

(d) How much will it cost the 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 (+/-): Cost savings are unknown at this time.

Expenditures (+/-): Expenditures are unknown at this time.

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 unknown whether this administrative regulation will have a major economic impact at this time.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. There are no federal statutes or regulations that constitute a federal mandate.

(2) State compliance standards. KRS 189.281.

(3) Minimum or uniform standards contained in the federal mandate. The only federal standard, though not a mandate relates to safety features of the OHV vehicles pursuant to 49 C.F.R. sec. 571.209.

(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 establishes requirements that are consistent with those relating to OHV safety features or devices established in 49 C.F.R. sec. 571.209.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements are imposed.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Epidemiology and Health Planning (New Administrative Regulation)

901 KAR 5:130. Certificate of abortion.

RELATES TO: KRS 213.011, 213.096

STATUTORY AUTHORITY: KRS 194A.050, 213.096, 2022 Ky. Acts Ch. 210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 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 213.096(4) authorizes a person in charge of an institution or that person's designated representative to complete a certificate of an abortion when requested by the patient. 2022 Ky. Acts ch. 210 requires the cabinet to design the form to request a certificate of abortion and to incorporate the form in an administrative regulation. This administrative regulation establishes the process for requesting a certificate of an abortion and incorporates by reference the certificate worksheet form.

Section 1. Definitions. (1) "Abortion" is defined by KRS

213.011(1).

(2) "Fetal death" is defined by KRS 213.011(4).

Section 2. Certificate of Abortion. (1) In accordance with KRS 213.096(4), a patient may request a certificate of abortion when:

(a) The abortion occurs at twenty (20) weeks gestation or more; or

(b) The fetus weighs three hundred fifty (350) grams or more; and

(c) The abortion is not reported as a stillbirth or fetal death.

(2) The Abortion Certificate Worksheet, VS-920A, shall be:

(a) Signed by the person in charge of the institution or that person's designated representative; and

(b) Filed with the state registrar within five (5) working days of the date of abortion.

(3) A registered certificate of abortion shall only be released to:

(a) The individual named as mother on the certificate; or

(b) The legal guardian of the individual named as mother on the certificate.

(4) A non-refundable fee of fifteen (15) dollars shall be paid for the search and certification of abortion certificate records.

Section 3. Incorporation by Reference. (1) "Abortion Certificate Worksheet", VS-920A, 6/2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may be obtained, subject to applicable copyright law, at <https://chfs.ky.gov/agencies/dph/dehp/vsb/Pages/abreqadr.aspx>.

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2022

FILED WITH LRC: July 13, 2022 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 26, 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 September 19, 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 September 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; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for requesting a certificate of abortion and incorporates by reference the certificate worksheet form.

(b) The necessity of this administrative regulation: KRS 213.096 was amended by 2022 Ky. Acts ch. 210 to allow a patient to request

a certificate of abortion provided that the abortion is not reported as a stillbirth or fetal death.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for requesting a certificate of abortion.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure individuals who want a certificate of abortion are aware of the process.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any woman seeking an abortion and the physician who performs the abortion. On average, there are 2,616 abortions performed each year. The Office of Vital Statistics (OVS) within the Department for Public Health will also be impacted by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The person in charge of a facility or that person's designated representative will need to be aware of the process to file a certificate of abortion when requested by the patient. Staff in OVS will need to be aware of the disclosure limitations for providing a certificate of abortion.

(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 costs to the person in charge of a facility or that person's designated representative to file the abortion certificate worksheet.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Women who request a certificate will have a record of the procedure on file with the state registrar. Staff in OVS will protect the identity of the woman named on the certificate as mother.

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

(a) Initially: The department is unable to determine the initial cost to implement this administrative regulation. There will be costs associated with the staff time to file, search, and print a certificate of abortion.

(b) On a continuing basis: The department is unable to determine the ongoing cost to implement this administrative regulation. There will be costs associated with the staff time to file, search, and print a certificate of abortion.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: This administrative regulation does establish a nominal fee for the search and certification of the abortion certificate.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a non-refundable fee of fifteen (15) dollars for the search and certification of abortion certificates.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation are applied equally to individuals who request a certificate of abortion.

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 the Office of Vital Statistics within the Division of Epidemiology and Health Planning in the Department for Public Health, Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 213.096 and 2022 Ky. Acts ch. 210.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 include a nominal fee of fifteen (15) dollars to offset the costs of searching for and certifying the abortion certificate. An exact amount of revenue cannot be determined because the number of certificates that would be requested is unknown.

(b) How 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 include a nominal fee of fifteen (15) dollars to offset the costs of searching for and certifying the abortion certificate. An exact amount of revenue cannot be determined because the number of certificates that would be requested is unknown.

(c) How much will it cost to administer this program for the first year? The department is unable to determine the initial cost to implement this administrative regulation. There will be costs associated with the staff time to file, search, and print a certificate of abortion.

(d) How much will it cost to administer this program for subsequent years? The department is unable to determine the ongoing cost to implement this administrative regulation. There will be costs associated with the staff time to file, search, and print a certificate of abortion.

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 any cost savings 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 any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? Individuals who request a certificate of abortion be printed from the Office of Vital Statistics will be assessed a non-refundable fee of fifteen (15) dollars. The department is unable to determine the initial cost to implement this administrative regulation. There will be costs associated with the staff time to file, search, and print a certificate of abortion.

(d) How much will it cost the regulated entities for subsequent years? Individuals who request a certificate of abortion be printed from the Office of Vital Statistics will be assessed a non-refundable fee of fifteen (15) dollars. The department is unable to determine the ongoing cost to implement this administrative regulation. There will be costs associated with the staff time to file, search, and print a certificate of abortion.

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 Epidemiology and Health Planning

(New Administrative Regulation)

901 KAR 5:140. Permit to transport fetal remains.

RELATES TO: KRS 213.081, 213.991, 311.732

STATUTORY AUTHORITY: KRS 194A.050, 213.081, 213.098

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050

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 213.081(2) requires a permit for the transportation of fetal remains. KRS 213.098 requires the cabinet to design the form to request a certificate of abortion document the age of the parent or parents of the fetal remains, the status of the fetal remains resulting from an abortion for the purpose of cremation that meet the requirements for a birth-death, provisional death, or death certificate for transport or cremation, the designation of how the fetal remains shall be disposed and who shall be responsible for final disposition, any additional information required by the cabinet, and to incorporate the form in an administrative regulation. This administrative regulation establishes the process to request a permit to transport fetal remains and incorporates by reference the permit request form.

Section 1. Definition. (1) "Fetal remains" is defined by KRS 213.098(1).

Section 2. Transport of Fetal Remains. (1) In accordance with KRS 213.098, a healthcare facility or abortion clinic shall notify the parent or parents of their right to determine the final disposition of the fetal remains resulting from an abortion or a miscarriage.

(2) Notification shall be made both orally and in writing and provided to the parent or parents within twenty-four (24) hours before the abortion procedure or twenty-four (24) hours after the miscarriage.

(3) The parent or parents of the fetal remains may:

(a) Choose to take responsibility for the final disposition of the fetal remains; or

(b) Relinquish responsibility for the final disposition of the fetal remains to the healthcare facility or abortion clinic.

(4) The healthcare facility or abortion clinic shall provide the parent or parents who take responsibility for final disposition a Permit to Transport Fetal Remains, VS-922.

(5) The parent or parents who take responsibility for fetal remains may contact the coroner of their county of residence to assist with the final disposition or may transport the fetal remains to a funeral home of their choice.

(6) The coroner who assists with the disposition of fetal remains shall complete the Permit to Transport Fetal Remains and submit a copy directly to the Office of Vital Statistics.

(7) A funeral home that receives fetal remains directly from the parent or parents shall request a copy of the Permit to Transport Fetal Remains and submit a copy directly to the Office of Vital Statistics.

(8) A healthcare facility or abortion clinic responsible for the final disposition of fetal remains shall follow their established protocols

for disposition of human remains.

(9) Failure to obtain a permit to transport fetal remains may result in a penalty under KRS 213.991(3)(b).

Section 3. Incorporation by Reference. (1) "Permit to Transport Fetal Remains", VS-922, 7/2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, first floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may be obtained, subject to applicable copyright law, at <https://chfs.ky.gov/agencies/dph/dehp/vsb/Pages/abreqadr.aspx>.

STEVEN J. STACK, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 11, 2022

FILED WITH LRC: July 13, 2022 at 8:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 26, 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 September 19, 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 September 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 and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes process to request a permit to transport fetal remains and incorporates by reference the permit request form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process a parent or parents would follow to request a permit to transport fetal remains and to incorporate the form required by 2022 Ky Acts ch. 210.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the process to request a permit to transport fetal remains.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure fetal remains are transported in accordance with 2022 Ky Acts ch. 210 and are properly disposed.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any woman seeking an abortion and the physician who performs the abortion. On average, there are 2,616 abortions performed each year. The Office of Vital Statistics (OVS) within the Department for Public Health will also be impacted by this administrative regulation. Healthcare facilities or abortion clinics that retain guardianship of the fetal remains for final disposition, coroners who may transport the fetal remains, and funeral homes that receive the fetal remains will 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: The healthcare facility or abortion clinic staff will need to document the final disposition of fetal remains in the patient's medical record and will need to provide the permit to transport fetal remains form to the parent or parents who elect to retain the fetal remains for final disposition. Coroners and funeral homes will need to be aware of the permit requirements and ensure the permit is submitted directly to OVS. Staff in OVS will need to be aware of the permit to transport fetal remains.

(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 costs to the healthcare facility or abortion clinic, or the parent or parents to complete the permit to transport fetal remains. There will be no cost to the coroner or funeral home. The Office of Vital Statistics will incur the costs associated with development of the forms as well as storage of the completed forms once received.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those transporting fetal remains for final disposition will have the proper documentation to support the transport.

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

(a) Initially: The department is unable to determine the initial cost to implement this administrative regulation. There will be initial costs associated with the staff time to develop the permit to transport form.

(b) On a continuing basis: The department is unable to determine the ongoing cost to implement this administrative regulation. There will be costs associated with the receipt, storage, and maintenance of the form.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: 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 established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation are applied equally to individuals who take responsibility for the disposition of fetal remains.

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 the Office of Vital Statistics within the Division of Epidemiology and Health Planning in the Department for Public Health, Cabinet for Health and Family Services.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 194A.050, 213.081, and 213.098.

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

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

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

(c) How much will it cost to administer this program for the first year? The department is unable to determine the initial cost to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The department is unable to determine the ongoing cost to implement this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 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 any cost savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? The department is unable to determine the initial cost to implement this administrative regulation. There will be costs associated with the receipt, storage, and maintenance of the permit to transport form.

(d) How much will it cost the regulated entities for subsequent years? The department is unable to determine the ongoing cost to implement this administrative regulation. There will be costs associated with the receipt, storage, and maintenance of the form.

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 Office of Inspector General Division of Health Care (New Administrative Regulation)

902 KAR 20:365. Kentucky abortion-inducing drug certification program and registration of qualified physicians.

RELATES TO: KRS 216B.015, 216B.105, 216B.200 - 216B.210, 311.720(1), 311.7731, 311.7733, 311.7734

STATUTORY AUTHORITY: KRS 216B.202(1), 216B.206

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.202(1) requires the cabinet to promulgate administrative

regulations in accordance with KRS Chapter 13A to establish a certification program to oversee and regulate the distribution and dispensing of abortion-inducing drugs. KRS 216B.206 requires the cabinet to establish requirements for physicians who prescribe abortion-inducing drugs. KRS 311.7733 requires a physician to be registered with the cabinet before providing abortion-inducing drugs. This administrative regulation establishes requirements for physicians, manufacturers, distributors, and abortion facilities that prescribe, transport, supply, dispense, or sell abortion-inducing drugs.

Section 1. Definitions. (1) "Abortion" is defined by KRS 311.720(1).

- (2) "Abortion facility" is defined by KRS 216B.015(1).
- (3) "Abortion-inducing drug" is defined by KRS 311.7731(2).
- (4) "Cabinet" is defined by KRS 311.7731(5).
- (5) "Distributor" is defined by KRS 311.7731(9).
- (6) "Hospital" is defined by KRS 311.720(7).
- (7) "Manufacturer" is defined by KRS 311.7731(9).
- (8) "Physician" is defined by KRS 311.720.
- (9) "Provide" is defined by KRS 311.7731(13).
- (10) "Qualified physician" is defined by KRS 311.7731(14).

Section 2. Physician registration. (1) In accordance with KRS 311.7733, only a qualified physician registered with the cabinet may provide abortion-inducing drugs to a pregnant person.

(2) To be eligible for registration, a qualified physician shall:

- (a) Demonstrate compliance with KRS 216B.206(1)(a), (c), (m), and (n); and
- (b) Certify compliance with KRS 216B.206(1)(b), (d) - (l), (o), and (p).

Section 3. Certification of manufacturers, distributors, pharmacies, and abortion facilities. (1) In accordance with KRS 216B.202 and 216B.204, the following entities shall be certified by the cabinet:

- (a) A manufacturer or distributor that transports, supplies, or sells abortion-inducing drugs;
 - (b) A pharmacy that dispenses abortion-inducing drugs; or
 - (c) A licensed abortion facility.
- (2)(a) To be eligible for certification, a manufacturer, distributor, or pharmacy shall:
- 1. Demonstrate compliance with KRS 216B.204(2)(a) and (d); and
 - 2. Certify compliance with KRS 216B.204(2)(b), (c), (d), (e), and (f).
- (b) In addition to complying with paragraph (a) above, a pharmacy shall also comply with KRS 216B.204(3) to be eligible for certification.

Section 4. Application and fees. (1) A qualified physician applicant for registration to provide abortion-inducing drugs shall submit to the Office of Inspector General:

- (a) A completed Application for Registration to Provide Abortion-Inducing Drugs; and
 - (b) An accompanying fee in the amount of \$155, made payable to the Kentucky State Treasurer and sent to the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care, 275 East Main Street 5E-A, Frankfort, Kentucky 40621.
- (2) A manufacturer, distributor, pharmacy, or abortion facility applicant for certification to transport, supply, sell, or dispense abortion-inducing drugs shall submit to the Office of Inspector General:

- (a) A completed Application for Participation in the Abortion-Inducing Drug Certification Program; and
 - (b) An accompanying fee in the amount of \$155, made payable to the Kentucky State Treasurer and sent to the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care, 275 East Main Street 5E-A, Frankfort, Kentucky 40621.
- (3) As a condition of annual renewal, the application required by subsections (1) and (2) of this section and a renewal fee in the amount of \$155 shall be submitted to the cabinet at least thirty (30) days prior to the date of expiration of the registration or certification.

Renewal fees shall be paid as set out in paragraph (2)(b) of this section.

Section 5. Operations. (1) A manufacturer, distributor, physician, qualified physician, pharmacy, abortion facility, and any other person shall comply with KRS 311.7733(2) prohibiting the use of courier, delivery, or mail services.

(2) In accordance with KRS 216B.204(1)(c), no person or entity shall intentionally, knowingly, or recklessly ship abortion-inducing drugs to a physician unless the physician is registered with the cabinet pursuant to this administrative regulation and as shown on the Office of Inspector General's Web site: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/default.aspx>.

(3) In accordance with KRS 216B.204(1)(g), a pharmacy shall not intentionally, knowingly, or recklessly dispense or distribute abortion-inducing drugs directly to a patient in Kentucky.

(4) In accordance with KRS 216B.204(1)(h), manufacturers and distributors shall intentionally and knowingly distribute only to certified pharmacies and in-person dispensing clinics, medical offices, abortion facilities, and hospitals that are in compliance with the United States Federal Drug Administration's outlined Mifepristone Risk Evaluation and Mitigation Strategy in effect on July 14, 2022.

(5) A qualified physician registered with the cabinet shall maintain hospital admitting privileges or enter into a written associated physician agreement as required by KRS 311.7734(1)(b) and comply with all other provisions of KRS 216B.206(2) and 311.7734.

Section 6. Complaints. In accordance with KRS 216B.210, a complaint regarding potential violations of the Abortion-Inducing Drug Certification Program may be submitted on the Office of Inspector General's Web site: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/default.aspx>.

Section 7. Denial, Suspension, Revocation, and Fines. (1) The cabinet shall deny an application for registration or certification if:

- (a) The applicant or existing agency knowingly misrepresents or submits false information on the application; or
 - (b) The applicant or existing agency fails to provide the information required by the application.
- (2) The cabinet shall revoke or suspend certification and impose fines:
- (a) In accordance with KRS 216B.208(1)(a) - (e); or
 - (b) If the cabinet determines that there has been substantial failure to comply with the provisions of this administrative regulation.
- (3) The cabinet shall:
- (a) Revoke or suspend registration of a physician and impose fines as set out in KRS 216B.208(1)(e)3.; and
 - (b) Report the violation to the Kentucky Board of Medical Licensure in accordance with KRS 216B.208(1);
- if the cabinet determines that there has been substantial failure to comply with the provisions of this administrative regulation.

Section 8. Notice of Adverse Action. (1) Except as set out in KRS 216B.208(1)(e)1., OIG shall provide written notice of adverse action at least thirty (30) calendar days prior to the effective date of the denial or revocation.

(2) In accordance with KRS 216B.208(1)(e)1., the cabinet shall immediately notify a pharmacy, manufacturer, or distributor that its certification is suspended and will be revoked in fifteen (15) days if OIG determines that a certified entity has intentionally, knowingly, or recklessly violated KRS 216B.200 to 216B.210.

(3) A notice of adverse action issued in accordance with subsection (1) or (2) of this section shall:

- (a) Explain the reason for the denial or revocation, and monetary penalty if applicable;
- (b) Advise the individual or entity that the right to request an appeal prior to the effective date of the denial or revocation, and monetary penalty if applicable; and
- (c) Specify that the adverse action shall be stayed if an appeal is requested.

Section 9. Appeals. An individual or entity that submits a written request for appeal within thirty (30) calendar days of the date the agency receives a notice of adverse action, including revocation, shall be afforded a hearing in accordance with KRS 216B.105.

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

(a) Form OIG 20-365A, "Application for Registration to Provide Abortion-Inducing Drugs", July 2022 edition;

(b) Form OIG 20-365B, "Application for Participation in the Abortion-Inducing Drug Certification Program", July 2022 edition; and

(c) Form OIG 20-365C, "Physician Dispensing Agreement Form", July 2022 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the Office of Inspector General's Web site at: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/lcapplications.aspx>.

ADAM MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 15, 2022

FILED WITH LRC: July 15, 2022 at 10:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 26, 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 hearing shall notify this agency in writing by September 19, 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 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 September 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. 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: Kara Daniel; Stephanie Brammer-Barnes, Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes requirements for the Kentucky Abortion-Inducing Drug Certification Program and registration requirements for physicians to provide abortion-inducing drugs.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to comply with KRS 216B.202 – 216B.210, 311.7731, 311.7733, 311.7734 (HB 3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation conforms to the content of KRS 216B.202 – 216B.210, 311.7731, 311.7733, 311.7734 (HB 3) by establishing requirements for the Kentucky Abortion-Inducing Drug Certification Program and registration requirements for physicians to provide abortion-inducing drugs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation assists in the effective administration of the statutes by establishing requirements for the Kentucky Abortion-Inducing Drug Certification Program and registration requirements for physicians to provide abortion-inducing drugs as required by HB 3 enacted by the 2022 General Assembly.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new administrative regulation affects manufacturers, distributors, pharmacies, and abortion facilities that will transport, supply, sell, or dispense abortion-inducing drugs, and physicians who will provide abortion-inducing drugs. It is not known how many entities and physicians will apply for certification or registration.

(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 HB 3 and this administrative regulation, entities seeking certification and physicians seeking registration will be required to submit an initial and annual renewal application to the cabinet with accompanying documentation. They will have to comply with the extensive requirements in HB 3.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation establishes application and renewal fees of \$155 per applicant. This amount is consistent with application fees paid by abortion facilities licensed under 902 KAR 20:360.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities seeking certification and physicians seeking registration to provide abortion-inducing drugs must demonstrate compliance with this administrative regulation and HB 3.

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

(a) Initially: The Office of Inspector General (OIG) will seek to hire one (1) additional grade 15 position to implement and oversee HB 3's new registration and certification program and draft an annual report, plus one-half of one position to investigate complaints. The cost of the additional staff will be approximately \$132,000. Additionally, changes to the cabinet's website will be necessary to build an electronic system to store and track information, display certified and qualified providers on the website, and create a way to accept anonymous complaints, at an estimated cost of \$25,000.

(b) On a continuing basis: The continuing costs will be approximately \$132,000 per year for one and one-half employees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes an initial and annual registration fee of \$155 for qualified physicians. This administrative regulation also establishes an initial and annual registration fee of \$155 for manufacturers, distributors, pharmacies, and abortion facilities.

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes an initial and annual fee of \$155 for registered or certified entities.

(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 administrative regulation impacts manufacturers, distributors, pharmacies, abortion facilities, and physicians and the Cabinet for Health and Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.202 – 216B.210, 311.7731, 311.7733, 311.7734.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 regulation establishes an initial and annual fee of \$155 for registration or certification. KRS 216B.208 authorizes the cabinet to impose fines of \$100,000 - \$5 million for noncompliance. However, it is not known how many entities or physicians will apply for registration or certification, or be subject to a fine after registration or certification.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation establishes an initial and annual fee of \$155 for registration or certification. KRS 216B.208 authorizes the cabinet to impose fines of \$100,000 - \$5 million for noncompliance. However, it is not known how many entities or physicians will apply for registration or certification, or be subject to a fine after registration or certification.

(c) How much will it cost to administer this program for the first year? The Office of Inspector General (OIG) will seek to hire one (1) additional grade 15 position to implement and oversee HB 3's new registration and certification program and draft an annual report, plus one-half of one position to investigate complaints. The cost of the additional staff will be approximately \$132,000. Additionally, changes to the cabinet's website will be necessary to build an electronic system to store and track information, display certified and qualified providers on the website, and create a way to accept anonymous complaints, at an estimated cost of \$25,000.

(d) How much will it cost to administer this program for subsequent years? The continuing costs will be approximately \$132,000 per year.

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

Revenues (+/-):

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 cost regulated entities a fee of \$155 during the first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will cost regulated entities a fee of \$155 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)] It is not known how many entities and physicians will apply for registration or certification, and the costs to the applicants of the additional requirements are difficult to quantify. Therefore, the cabinet is unable to determine whether this administrative regulation will have a major economic impact on the regulated entities.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Prevention and Quality Improvement (New Administrative Regulation)

902 KAR 21:040. Community health worker certification.

RELATES TO: KRS13B.080-160, 211.090, 211.180

STATUTORY AUTHORITY: KRS 194A.050, 2022 Ky Acts ch. 86

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. Ky Acts ch. 86 authorizes the Department for Public Health to promulgate administrative regulations for the certification of community health workers. This administrative regulation establishes the certification requirements for a community health worker.

Section 1. Definitions. (1) "Applicant" means an individual applying to be certified or recertified as a community health worker;

(2) "Certification" means the voluntary process by which the department grants recognition and use of a credential to individuals who are eligible to practice as certified community health workers;

(3) "Certified community health worker" or "CCHW" is defined by Ky Acts ch. 86.

(4) "Code of ethics" means the commonly understood principles and practices that all health and social service professionals are subject to. The Community Health Worker (CHW) code of ethics is maintained by the Kentucky Office of Community Health Workers and is available at <https://chfs.ky.gov/agencies/dph/dpqi/cdpb/Pages/chwp.aspx>.

(5) "Core competencies" means the knowledge and skills gained through education and experience, and includes:

(a) Communication;

(b) Use of public health concepts and approaches;

(c) Organizational and community outreach;

(d) Advocacy and community capacity building;

(e) Care coordination and system navigation;

(f) Health coaching;

(g) Documentation, reporting, and outcome management; and

(h) Legal, ethical, and professional conduct.

(6) "Department" means the Kentucky Department for Public Health.

(7) "Program" means the Kentucky Office of Community Health Workers (KOCHW) in the Department for Public Health.

(8) "Verifiable employment" means employment that can be confirmed by the department and that demonstrates achievement of

a minimum standard of proficiency in the core competencies.

Section 2. Application for Initial Certification. (1) An applicant for initial certification as a certified community health worker shall meet the qualifications listed in Ky Acts ch. 86.

(2) Applications shall be submitted to the program for review and approval.

(3) All applications shall include a color photograph of the applicant.

(4) A nonrefundable application fee of fifty (50) dollars by check or money order made payable to the Kentucky State Treasurer shall be submitted to the program.

(5) The application shall not be considered complete and shall not be processed until all information and any subsequent documentation requested by the program is provided.

(6) If an application is denied, the applicant shall be notified in writing of the decision and given the opportunity to reapply or appeal the denial decision.

(7) Once an application is approved, a certificate with a certificate number shall be issued.

Section 3. Certified Community Health Worker Eligibility. (1) An applicant for certification as a community health worker may be eligible based on training or verifiable employment.

(2) To be eligible based on training, the applicant shall submit:

(a) Documentation of successful completion of a competency-based training program by a KOCHW approved organization. Training must be completed within three (3) years prior to application; and

(b) Documentation of successful completion of a minimum of forty (40) hours of verifiable mentorship completed within three (3) years prior to application.

(3) To be eligible based on experience the applicant shall have a minimum of 2,500 hours of verifiable employment as a community health worker within three (3) years prior to application.

Section 4. Renewal of a Current Certificate. (1) All certificates for CCHWs shall be renewed annually by October 31.

(2) A CCHW who holds a current certificate and has completed the continuing education requirements for renewal in Section 6 of this administrative regulation may apply to renew their certificate by:

(a) Submitting a complete application; and

(b) Payment of the twenty-five (25) dollar renewal application fee by check or money order made payable to the Kentucky State Treasurer.

Section 5. Extension for Renewal. (1) A CCHW may submit a written request for an extension to submit the renewal paperwork. This written request shall:

(a) Be received by the program on or before October 31; and

(b) Provide justification for the request.

(2) The program may grant an extension beyond the October 31 deadline based on extenuating circumstances beyond the control of the CCHW.

(3) The CCHW shall be notified in writing of the program's decision to grant or deny the extension.

(4) Failure to submit the renewal or request an extension by the October 31 deadline shall result in expiration of the certificate.

Section 6. Continuing Education Requirements. (1) Continuing education requirements for renewal shall be fulfilled during each annual renewal period.

(2) A CCHW shall complete a minimum of ten (10) contact hours of continuing education related to the core competencies each annual renewal period.

(3) Credit for semester hours taken at a college or university shall be:

(a) Consistent with the community health worker core competencies; and

(b) Approved at three (3) credits for each semester hour.

(4) Continuing education courses may be:

(a) Completed in person before a live presenter;

(b) Through home or self-study; or

(c) Delivered through electronic media or technology including distance learning, online, or teleconference.

(5) Effective October 31, 2023, all CCHWs must complete a KOCHW approved training in oral healthcare, infant and maternal healthcare, and geriatric healthcare.

(a) CHWs who hold a current certification must complete the training by October 2023 for renewal.

(b) CHWs who become newly certified must complete the training within 12 months of certification.

(c) These are one-time requirements and will not need to be repeated.

(6) The program shall maintain a record of all approved community health worker training providers on the program's website.

(7) Providers of approved curricula shall notify the program within twenty (20) business days of a trainee's successful completion of a community health worker training.

Section 7. Certified Community Health Worker Scope of Practice. A certified community health worker may:

(1) Provide cultural mediation among individuals, communities, and health and social service systems;

(2) Provide culturally appropriate health education and information;

(3) Provide care coordination, case management, and system navigation services;

(4) Provide coaching and social support;

(5) Advocate for individuals and communities;

(6) Build individual and community capacity;

(7) Provide direct services;

(8) Implement individual and community assessments;

(9) Conduct outreach; or

(10) Participate in evaluation and research.

Section 8. Complaint Procedures. (1) Any organization or individual may file a signed written complaint.

(2) The complaint shall be sent to the Kentucky Office of Community Health Workers, 275 East Main Street, HS2W-E, Frankfort, Kentucky 40621 or by email at chw.certification@ky.gov, subject line "Community Health Worker Complaint".

(3) The complaint shall include:

(a) A statement that the CCHW has violated the requirements of this administrative regulation or the CHW code of ethics;

(b) The facts on which the complaint is based; and

(c) The signature and contact information for the complainant.

(4) The program shall provide notice to the CCHW named in the complaint that a complaint has been filed and provide the CCHW an opportunity to respond to the complaint, including a proposal to resolve the complaint.

(5) The alleged violation shall have occurred not more than one (1) year before the date that the complaint is received by the program.

(6) Within sixty (60) calendar days after a complaint is filed, the program shall:

(a) Carry out an independent investigation, if the program determines that an investigation is necessary;

(b) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) Review all relevant information and make a determination as to whether the CCHW has violated the requirements of this administrative regulation or the code of ethics; and

(d) Issue a written decision to the complainant that addresses each allegation in the complaint and contains the reasons for the program's final decision.

Section 9. Denial, Suspension, and Revocation of a Certificate.

(1) The program reserves the right to:

(a) Deny an application for certification or renewal; and

(b) Conduct an audit of a CCHW.

(2) Written notice of the denial of an application for certification or renewal shall be provided to the applicant and include:

(a) The applicant's opportunity to reapply; or

(b) Right to appeal.

(3) A request to appeal the denial of a certificate shall be submitted to the department within ten (10) days from the date listed on the written notice issued pursuant to subsection (2) of this section and provide evidence that the denial was in error.

(4) The department shall re-evaluate the evidence and issue a final notice to the applicant within ten (10) days.

(5) An applicant whose application is denied following the appeal shall be ineligible to apply for a period of one (1) year following the final notice of denial.

(6) A certificate may be suspended if:

(a) Audit findings show the CCHW has violated the requirements of the program; or

(b) The CCHW is found in violation of the CHW code of ethics.

(7) Written notice of the suspension shall be provided to the CCHW and include the right to appeal.

(8) A request to appeal the suspension shall be submitted to the program within ten (10) days of the notice and include evidence that the suspension is in error or the reason for the suspension has been corrected.

(9) Failure to submit a request to appeal the suspension within ten (10) days shall result in permanent suspension of the certificate.

(10) A certificate that has been suspended for one (1) year shall be considered revoked.

(11) During the period of suspension, the CCHW shall return the certification and identification card to the program and shall not engage in the practice of community health work until the suspension is lifted or further disciplinary action is taken.

(12) A certificate shall be revoked for repeated violations of the requirements of this administrative regulation or the CHW code of ethics.

(13) Written notice of the revocation shall be provided to the CCHW and include the right to request a hearing in accordance with KRS Chapter 13B.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 28, 2022

FILED WITH LRC: July 11, 2022 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 26, 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 September 19, 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 September 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 the initial and renewal certification process for certified community health workers including the process for certification suspension or revocation, and outlines the core

competencies and scope of practice.

(b) The necessity of this administrative regulation: 2022 Ky. Acts ch. 86 authorizes the department to promulgate administrative regulations for the initial and renewal certification process including the required fee, the core competencies, continuing education requirements, scope of practice for certified community health workers, and the certification suspension, denial and revocation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation outlines the application requirements, the core competencies and scope of practice for a community health worker. This administrative regulation provides the appeal process for an individual whose application has been denied, or current certification suspended or revoked.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure individuals currently certified as a community health worker understand the core competencies and the scope of practice. It will ensure those seeking initial certification are aware of the training and employment requirements.

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

(a) How the amendment will change this existing administrative regulation: This 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: Currently there are eighty-five (85) certified community health workers.

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

(a) List the actions that each of the regulated entities identified in questions(3) will have to take to comply with this administrative regulation or amendment: Individuals who are currently certified as a community health worker will need to be aware of the recertification requirements. Individuals seeking initial certification will need to be aware of the initial certification eligibility and application process. All certified community health workers will need to be aware of the core competencies and scope of practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Community health workers who are currently certified by the Office of Community Health Workers will pay a twenty-five (25) dollars renewal fee each year, as well as costs associated with obtaining continuing education requirements. Individuals seeking initial certification as a community health worker will pay a fifty (50) dollar certification fee as well as costs associated with any required trainings.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals certified by the department as a certified community health worker will be able to use the title of Certified Community Health Worker and will be able to be employed by an entity that is an enrolled Medicaid provider.

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

(a) Initially: The initial costs of the Office of Community Health Workers to implement this administrative regulation will be approximately \$476,000. This includes all staff costs, and the costs associated with operating the program.

(b) On a continuing basis: The ongoing costs to the Office of Community Health Workers to implement this administrative regulation will be approximately \$476,000. This includes all staff costs, and the costs associated with operating the program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Office of Community Health Workers in the

Department for Public Health is funded through a grant from the Centers for Disease Control and Prevention, state general fund dollars, and revenue received from the certification fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: 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. This administrative regulation assesses a fifty (50) dollar initial certification fee and a twenty-five (25) dollar renewal fee.

(9) TIERING: Is tiering applied? Tiering is not applied. While there are two (2) different methods for certification the requirements of this administrative regulation are applied equally to all applicants.

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.

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 Community Health Workers in the Division of Prevention and Quality Improvement and 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 and 2022 Ky Acts ch. 86.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 between \$2,000 and \$4,000 in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate between \$2,000 and \$4,000 in subsequent years.

(c) How much will it cost to administer this program for the first year? It will cost approximately \$476,000 to administer this program in the first year. This includes all staff costs, and the costs associated with operating the program.

(d) How much will it cost to administer this program for subsequent years? It will cost approximately \$476,000 to administer this program in subsequent years. This includes all staff costs, and the costs associated with operating the 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 generate minimal 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 generate minimal costs savings in subsequent years.

(c) How much will it cost the regulated entities for the first year? This administrative regulation will cost initial applicants for certification fifty (50) dollars in their first year.

(d) How much will it cost the regulated entities for subsequent years? This administrative regulation will cost applicants who renew their certification twenty-five (25) dollars in subsequent years.

Note: If specific dollar estimates cannot be determined, provide

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of July 14, 2022

Call to Order and Roll Call

The July meeting of the Administrative Regulation Review Subcommittee was held on Thursday, July 14, 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; Senator David Yates. Representatives Randy Bridges, MaryLou Marzian, and Deanna Frazier Gordon.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Becky Gilpatrick, Director of Student Aid, Miles Justice, Senior Associate Counsel, Kentucky Higher Education Assistance Authority (KHEAA); Rosemary Holbrook, Assistant General Counsel, Alan Hurst, Executive Director (Office of Employee Relations), Alaina Myers, Deputy Commissioner, Personnel Cabinet; Carrie Bass, Staff Attorney Supervisor, Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority (KPPA); Christopher Harlow, Executive Director, Kentucky Board of Pharmacy; Kanetha Dorsey, Executive Director, Kentucky Board of Embalmers and Funeral Directors; Jeffrey Prather, General Counsel, Kentucky Board of Nursing; Eddie Slone, Interim Executive Director, John Wood, Attorney, Kentucky Board of Emergency Medical Services; Dave Dreves, Fisheries Director, Steven Fields, Attorney, Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources; Amber Arnett, Staff Attorney, Captain Marshall Johnson, Commander, Kentucky State Police; Anthony Hudgins, Deputy Executive Director, Office of Unemployment Insurance; Honor Barker, Deputy Commissioner, Oran McFarlan, Deputy General Counsel, Department of Workforce Investment; Joshua Newton, General Counsel, Department of Alcohol Beverage Control; Abigail Gall, Executive Advisor, Shaun Orme, Commissioner, Department of Insurance; Adam Mather, Inspector General, Kara Daniel, Deputy Inspector General, Office of Inspector General; Julie Brooks, Regulations Coordinator, Carrell Rush, Epidemiologist, Department for Public Health; Rachael Ratliff, Regulations Coordinator, Department for Behavioral Health, Developmental and Intellectual Disabilities; Donna Fiaschetti, Kentucky Association of Nurse Anesthetists; Delores Polito, Kentucky Affiliate of ACNM and Kentucky Association of NP and NM.

The Administrative Regulation Review Subcommittee met on Thursday, July 14, 2022, and submits this report:

Administrative Regulations Reviewed by this Subcommittee:

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY:
Student and Administrative Services**

011 KAR 004:080. Student aid applications. Becky Gilpatrick, student aid director, and Miles Justice, senior associate counsel, represented the authority.

A motion was made and seconded to approve the following amendment: to amend Section 1 to make a technical correction. Without objection, and with agreement of the agency, the amendment was approved.

KHEAA Grant Programs

011 KAR 005:145. CAP grant award determination procedure.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Educational Excellence Scholarship Program

011 KAR 015:090. Kentucky Educational Excellence Scholarship (KEES) Program.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Early Childhood Development Scholarship Program

011 KAR 016:020. Early Childhood Development Scholarship Program disbursement process.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

Dual Credit Scholarship Program

011 KAR 022:010. Dual Credit Scholarship Program.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add one (1) definition; and (2) to amend Sections 1 through 3, 5, and 7 to comply with the

drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Optometry Scholarship Program

011 KAR 023:010. Optometry Scholarship Program.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Classified

101 KAR 002:046. Applying for employment, qualifications and examinations. Rosemary Holbrook, assistant general counsel; Alan Hurst, director; and Alaina Myers, deputy commissioner, represented the cabinet.

101 KAR 002:095E. Classified service general requirements.

101 KAR 002:095. Classified service general requirements.

101 KAR 002:190. Employee performance management system.

General

101 KAR 006:020E. Kentucky Employees Charitable Campaign.

101 KAR 006:020. Kentucky Employees Charitable Campaign.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems

105 KAR 001:390. Employment after retirement. Carrie Bass, staff attorney supervisor, and Jessica Beaubien, policy specialist, represented the systems.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 and 8 to clarify the factors used to determine employment status; and (2) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 3 through 8 to comply with the drafting and formatting requirements of KRS

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Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:020. Examination. Christopher Harlow, executive director, represented the board.

In response to a question by Senator Yates, Mr. Harlow stated that this administrative regulation would not result in a less rigorous licensure examination. The examination was developed by the national association.

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 3, 4, 6, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 002:050. Licenses and permits; fees.

201 KAR 002:225. Special limited pharmacy permit - medical gas.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Embalmers and Funeral Directors

201 KAR 015:030E. Fees. Kanetha Dorsey, executive director, represented the board.

201 KAR 015:030. Fees.

201 KAR 015:040E. Examination.

201 KAR 015:040. Examination.

201 KAR 015:050E. Apprenticeship and supervision requirements.

201 KAR 015:050. Apprenticeship and supervision requirements.

A motion was made and seconded to approve the following amendment: to amend Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 015:110E. Funeral establishment criteria.

201 KAR 015:110. Funeral establishment criteria.

201 KAR 015:125E. Surface transportation permit.

201 KAR 015:125. Surface transportation permit.

Board of Nursing

201 KAR 020:070. Licensure by examination. Jeffrey Prather, general counsel, represented the board.

In response to a question by Co-Chair Hale, Mr. Prather stated that the board was opting to allow more than one (1) attempt to pass the NCLEX in response to Senate Bill 10 from the 2022 Regular Session of the General Assembly. Clinicals no longer applied during the coronavirus (COVID-19) pandemic, and it seemed prudent to offer a second opportunity to pass the examination. Provisional licenses expired after six (6) months.

A motion was made and seconded to approve the following amendment: to amend Section 6 to comply with SB 2 from the 2021 Regular Session to add a link to the material incorporated by reference. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 020:240. Fees for applications and for services.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with SB 10 from the 2022 Regular Session. Without objection, and with agreement of the agency, the amendments were approved.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services

202 KAR 007:545. License classifications. Eddie Slone, interim executive director, and John Wood, counsel, represented the board.

202 KAR 007:560E. Ground vehicle staff.

In response to a question by Co-Chair Hale, Mr. Slone stated that this administrative regulation was filed on an emergency basis to allow CPR-certified drivers and bridge a gap in coverage of the program.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Services: Fish

301 KAR 001:201. Taking of fish by traditional fishing methods. Dave Dreves, fisheries director; Steven Fields, staff attorney; and Jenny Gilbert, legislative liaison, represented the department.

In response to a question by Co-Chair Hale, Mr. Dreves stated that muskie were highly sought after. Surrounding states had a forty (40) inch size limit. Kentucky's limit had been thirty-six (36) inches without any noticeable detriment to the species; therefore, it seemed appropriate to increase the size limit to forty (40) inches.

Game

301 KAR 002:132. Elk hunting seasons, permits, zones, and requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, 8, and 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.

301 KAR 002:172. Deer hunting seasons, zones, and requirements.

A motion was made and seconded to approve the following amendments: to amend Section 14 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 002:221. Waterfowl seasons and limits.

A motion was made and seconded to approve the following amendments: to amend Sections 9 and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: Driver Training

502 KAR 010:010. Definitions. Amber Arnett, staff attorney, and Captain Marshall Johnson, commander, Driver Testing Branch, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:020. Department facilities; facility inspection; conflict of interest.

A motion was made and seconded to approve the following amendments: to amend 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.

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502 KAR 010:030. Instructor's license.

502 KAR 010:035. Commercial driver's license skill testing.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:040. Training school facilities.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 6, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:050. Contracts and agreements.

A motion was made and seconded to approve the following amendment: to correct the agency name. Without objection, and with agreement of the agency, the amendment was approved.

502 KAR 010:060. School advertising.

A motion was made and seconded to approve the following amendments: to amend 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.

502 KAR 010:070. Training vehicle, annual inspection.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:080. License suspension, revocation, denial.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to substitute the term "motor vehicle" for "automobile"; and (2) to amend the RELATES TO; 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. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:090. Procedure for denial, suspension, nonrenewal or revocation hearings.

A motion was made and seconded to approve the following amendments: to amend 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.

502 KAR 010:110. Third-party CDL skills test examiner standards.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:120. Hazardous materials endorsement requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) add a definition for "CDL testing location"; and (b) delete the definition for "fingerprint centers"; (2) to amend Section 2 to reference the application requirements established by 49 C.F.R. 1572.9; (3) to amend Sections 2 and 3 to allow the fee for a fingerprint-based background check to be paid electronically; (4) to amend Section 3 to reference a "regional CDL

testing location"; (5) to amend Sections 5 and 6 to delete the provisions in their entirety; and (6) to amend Sections 1 through 3 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Office of Unemployment Insurance

787 KAR 001:360E. Overpayment waivers. Anthony Hudgins, deputy executive director, and Oran McFarlan, deputy general counsel, represented the office.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Advertising Distilled Spirits and Wine

804 KAR 001:102. General advertising practices. Joshua Newton, general counsel, 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 Sections 8 and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Malt Beverage Equipment, Supplies and Service

804 KAR 011:041. Growlers.

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 Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Malt Beverages and Wine

804 KAR 014:011. Brewing and winemaking for personal use.

Department of Insurance: Agents, Consultants, Solicitors and Adjustors

806 KAR 009:380. Limited lines self-service storage space insurance requirements. Abigail Gall, executive advisor, and Shaun Orme, executive advisor, 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 Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 009:390. Portable electronics retailer license.

In response to a question by Co-Chair West, Ms. Gall stated that this administrative regulation governed insurance on electronic devices, such as cellular telephones. Because these were not traditional insurance policies, a license was not necessary.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to make a technical correction; and (2) to amend Section 5 and the material incorporated by reference to make corrections to background information questions. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: State Health Plan

900 KAR 005:020E. State Health Plan for facilities and services. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the office. Ken Marshall, chief operating officer, University of Louisville Health, appeared in support of this administrative regulation.

In response to questions by Co-Chair West, Ms. Daniel stated that the State Health Plan was required to be amended annually. The coronavirus (COVID-19) pandemic strained the agency, and the State Health Plan veered off schedule. This filing was working toward getting back on schedule. This administrative regulation was filed on an emergency basis in order to meet the state deadline.

A motion was made and seconded to approve the following

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amendments: to amend the material incorporated by reference to: (1) make technical changes; and (2) allow licensure for applicants with prospective plans to provide fixed-site diagnostic cardiac catheterization. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 005:020. State Health Plan for facilities and services.

A motion was made and seconded to approve the following amendments: to amend the material incorporated by reference to: (1) make technical changes; and (2) allow licensure for applicants with prospective plans to provide fixed-site diagnostic cardiac catheterization. Without objection, and with agreement of the agency, the amendments were approved.

Certificate of Need

900 KAR 006:075E. Certificate of need nonsubstantive review.

In response to a question by Co-Chair West, Mr. Mather stated that this administrative regulation was intended to implement House Bill 777 from the 2022 Regular Session of the General Assembly.

A motion was made and seconded to approve the following amendments: to amend Section 2 to make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 006:075. Certificate of Need nonsubstantive review.

A motion was made and seconded to approve the following amendments: to amend Section 2 to make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

Essential Personal Care Visitor Program

900 KAR 014:010E. Essential personal care visitor programs; visitation guidelines.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

900 KAR 014:010. Essential personal care visitor programs; visitation guidelines.

Department for Public Health: Communicable Diseases

902 KAR 002:020E. Reportable disease surveillance. Julie Brooks, regulation coordinator, and Carrell Rush, epidemiologist, represented the department. Dr. Donna Fiaschetti, CRNA, Kentucky Association of Nurse Anesthetists, appeared in support of 902 KAR 20:106, and Dee Polito, CNM, vice president, Kentucky Affiliate of ACNM, appeared in support of 902 KAR 20:016.

Health Services and Facilities

902 KAR 020:016. Hospitals; operations and services.

In response to a question by Co-Chair Hale, Ms. Polito thanked the agency for providing admitting privileges to nurse midwives.

902 KAR 020:106. Operation and services; ambulatory surgical center.

In response to a question by Co-Chair Hale, Ms. Fiaschetti thanked the agency for establishing a surgical smoke evacuation system and for deleting the requirement that a certified nurse anesthetist practice under the supervision of a surgeon.

Representative Marzian clarified that this was Senator Raque Adams's bill.

Office of Inspector General

906 KAR 001:110. Critical access hospital services.

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

908 KAR 003:010. Patient's rights. Racheal Ratliff, regulation coordinator, 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 Sections 1 through 5 and 7 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the July 14, 2022, subcommittee agenda:

STATE BOARD OF ELECTIONS: Statewide Voter Registration

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.

Forms and Procedures

031 KAR 004:071E. Recanvas procedures.

031 KAR 004:131E. Delivery and return of absentee ballots transmitted to covered voters via facsimile or electronically.

031 KAR 004:141E. Submission of the federal postcard application via electronic mail.

031 KAR 004:196E. Consolidation of precincts and precinct election officers.

031 KAR 004:201E. Chain of custody for records during an election contest.

031 KAR 004:210E. Establishment of risk-limiting audit pilot program.

Voting

031 KAR 005:011E. Use of the federal write-in absentee ballot.

031 KAR 005:026E. Ballot standards and election security.

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 002:066. Certification and selection of eligible applicants for employment.

101 KAR 002:102. Classified leave general requirements.

Personnel Cabinet, Unclassified

101 KAR 003:015. Leave requirements for unclassified service.

FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems

105 KAR 001:450E. Quasi-governmental employer reports on independent contractors and leased employees.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:015. Continuing education.

Board of Dentistry

201 KAR 008:520. Fees and fines.

201 KAR 008:550. Anesthesia and sedation related to dentistry.

Real Estate Commission

201 KAR 011:121. Standards of professional conduct.

TOURISM, ARTS AND HERITAGE CABINET: Heritage Council

300 KAR 006:011E. Historic rehabilitation tax credit certifications.

JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: 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.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Employment Services

787 KAR 002:040. Local workforce development area governance. Honor Barker, deputy commissioner, and Oran McFarlan, deputy general counsel, represented the department. Senator Jimmy Higdon appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Ms. Barker stated that there were ten (10) local area workforce boards that aligned and partnered with Area Development Districts. In conjunction with the department, the Kentucky Workforce Innovation Board (KWIB) provided oversight, guidance, and technical assistance to the local boards. It was unclear to the department the extent to which Senate Bill 207 from the 2022 Regular Session of the General Assembly (SB 207) impacted this administrative regulation. The intention of this amendment was to clarify the governance structure. Because KWIB was an advisory board to the Governor, KWIB ultimately answered to the Governor as well. Requirements were not more stringent than the provisions established in the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. 3101 et seq. Mr. McFarlan stated that WIOA was a collaborative act among federal, state, and local bodies. Federal requirements required KWIB to issue policies, and this administrative regulation aligned with that.

In response to questions by Co-Chair Hale, Senator Higdon stated that this administrative regulation appeared to contravene SB 207, which established responsibilities for this program primarily through the Kentucky Education and Workforce Collaborative and through reorganized board representation. Senator Jimmy Higdon and Representative Bobby McCool were both members of KWIB. Local boards were a subdivision of Area Development Districts.

In response to a question by Co-Chair West, Senator Higdon stated that this administrative regulation seemed to have failed to apply the new organization established by SB 207. This administrative regulation seemed to leave the current board as it was before the bill.

Senator Yates stated that, if challenged, enacted legislation would supercede an administrative regulation if there were to be a

perceived conflict.

In response to a question by Co-Chair Hale, Ms. Barker stated that this administrative regulation did not impact the makeup of the board. This administrative regulation clarified that KWIB would issue policies and guidance to the local boards, all in accordance with WIOA. This clarification was recommended during the auditing process. Mr. McFarlan stated that he agreed that this administrative regulation did not affect the makeup of the board.

Co-Chair West stated that the main problem with this administrative regulation seemed to be the reference, "in coordination with the Governor." SB 207 seemed to be advocating for more independence for the local boards. Giving the Governor what compares to "veto power" through this administrative regulation might mitigate some of the intended independence.

In response to a question by Co-Chair West, Ms. Barker stated that federal law required coordination with the Governor.

Senator Yates stated that, if this administrative regulation were deferred, a determination was advisable to examine how these requirements would interact and preempt if a conflict were to be recognized.

Co-Chair Hale stated that SB 207 was good legislation, and this administrative regulation seemed to conflict.

In response to a question by Co-Chair West, Ms. Barker stated that the agency would defer consideration of this administrative regulation to the August 2022 meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

A motion was made and seconded to approve the following amendments: (1) to add a definition section; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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 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.

Department of Workers' Claims

803 KAR 025:195E. Utilization review, appeal of utilization review decisions, and medical bill audit.

803 KAR 025:195. Utilization review, appeal of utilization review decisions and medical bill audit.

Department of Insurance: Health Insurance Contracts

806 KAR 017:350. Life insurance and managed care.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Early Intervention System

902 KAR 030:120. Evaluation and eligibility.

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.

Other Business: Representative Bridges welcomed his grandson, Nicholas Saladino, who was attending this subcommittee meeting.

The subcommittee adjourned at 2:15 p.m. The next meeting of this subcommittee was tentatively scheduled for August 9, 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.

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of July 20, 2022, having been referred to the Interim Joint Committee on Health, Welfare, and Family Services on May 4, 2022, June 1, 2022, and July 6, 2022, pursuant to KRS 13A.290(6):

May 4, 2022

201 KAR 006:040 Proposed
201 KAR 020:220 Proposed
201 KAR 020:280 Proposed
201 KAR 020:360 Proposed
201 KAR 022:001 Proposed
201 KAR 022:053 Proposed
201 KAR 046:020 Proposed
900 KAR 013:010 Proposed
902 KAR 010:121 Proposed
902 KAR 010:190 Proposed

June 1, 2022

201 KAR 002:440 Proposed
201 KAR 017:110 Proposed
201 KAR 020:260 Emergency
201 KAR 020:480 Proposed
201 KAR 020:480 Emergency
201 KAR 022:020 Proposed

201 KAR 022:070 Proposed
201 KAR 022:170 Proposed
201 KAR 033:015 Proposed
201 KAR 035:070 Proposed
201 KAR 046:060 Proposed
908 KAR 003:010 Emergency
922 KAR 001:470 Proposed
922 KAR 002:280 Proposed

July 6, 2022

922 KAR 001:360 Proposed
922 KAR 001:530 Proposed

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

May 4, 2022

902 KAR 010:120 Proposed

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 20, 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 49th year of the *Administrative Register of Kentucky*, from July 2022 through June 2023.

Locator Index - Effective Dates

B - 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.

KRS Index

B - 9

A cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication during this *Register* year.

Certifications Index

B - 13

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

B - 14

A list of administrative regulations that have had technical, non-substantive amendments made during this *Register* year. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Because these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*; however, they are usually available for a short time on the Legislative Research Commission’s Web site.

Subject Index

B - 15

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 49. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another *Register* year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in 48 Ky.R. or 49 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. Other statutes or legislation may affect a regulation's actual end date.

016 KAR 009:11E	49 Ky.R. 240	7-13-2022
031 KAR 003:031E	48 Ky.R. 2902	4-28-2022
031 KAR 004:071E	48 Ky.R. 2904	4-28-2022
031 KAR 004:131E	48 Ky.R. 2906	4-28-2022
031 KAR 004:141E	48 Ky.R. 2909	4-28-2022
031 KAR 004:195E	48 Ky.R. 256	6-23-2021
031 KAR 004:196E	48 Ky.R. 2911	4-28-2022
031 KAR 004:200E	48 Ky.R. 258	6-23-2021
031 KAR 004:201E	48 Ky.R. 2913	4-28-2022
031 KAR 004:210E	48 Ky.R. 2914	4-28-2022
031 KAR 005:011E	48 Ky.R. 2916	4-28-2022
031 KAR 005:025E	48 Ky.R. 259	6-23-2021
031 KAR 005:026E	48 Ky.R. 2918	4-28-2022
101 KAR 002:095E	48 Ky.R. 2684	4-15-2022
101 KAR 006:020E	48 Ky.R. 2687	4-15-2022
102 KAR 001:360E	48 Ky.R. 2167	12-28-2021
103 KAR 043:340E	49 Ky.R. 6	6-2-2022
105 KAR 001:415E	48 Ky.R. 243	6-28-2022
105 KAR 001:450E	48 Ky.R. 2921	5-5-2022
200 KAR 017:110E	48 Ky.R. 5	6-2-2021
As Amended	1098	9-14-2021
Expired		2-27-2022
200 KAR 017:111E	49 Ky.R. 247	6-21-2022
201 KAR 002:106E	48 Ky.R. 1997	12-14-2021
Replaced	2116	6-2-2022
201 KAR 002:412E	48 Ky.R. 1466	10-11-2021
Withdrawn		6-27-2022
201 KAR 002:413E	49 Ky.R. 250	6-27-2022
201 KAR 012:030E	49 Ky.R. 253	7-12-2022
201 KAR 012:060E	49 Ky.R. 257	7-12-2022
201 KAR 012:082E	49 Ky.R. 259	7-12-2022
201 KAR 012:190E	49 Ky.R. 264	7-12-2022
201 KAR 012:230E	49 Ky.R. 266	7-12-2022
201 KAR 012:260E	49 Ky.R. 267	7-12-2022
201 KAR 012:290E	49 Ky.R. 269	7-12-2022
201 KAR 015:030E	48 Ky.R. 2689	4-7-2022
201 KAR 015:040E	48 Ky.R. 2692	4-7-2022
201 KAR 015:050E	48 Ky.R. 2693	4-7-2022
201 KAR 015:110E	48 Ky.R. 2697	4-7-2022
201 KAR 015:125E	48 Ky.R. 2700	4-7-2022
201 KAR 020:070E	48 Ky.R. 2702	4-6-2022
As Amended	49 Ky.R. 14	6-17-2022
201 KAR 020:260E	48 Ky.R. 2168	1-11-2022
Amended	2948	5-10-2022
201 KAR 020:480E	48 Ky.R. 2367	2-2-2022
Amended	2951	5-10-2022

Replaced	2959	7-20-2022
201 KAR 046:020E	48 Ky.R. 2172	12-21-2021
202 KAR 007:545E	48 Ky.R. 2704	3-30-2022
202 KAR 007:560E	48 Ky.R. 2926	5-3-2022
202 KAR 007:701E	49 Ky.R. 272	7-12-2022
300 KAR 006:011E	48 Ky.R. 2929	4-29-2022
503 KAR 001:140E	49 Ky.R. 277	7-13-2022
601 KAR 002:233E	47 Ky.R. 2335	4-12-2021
Replaced	48 Ky.R. 429	11-30-2021
603 KAR 010:011E	48 Ky.R. 736	7-30-2021
702 KAR 001:192E	48 Ky.R. 1999	12-8-2021
Am Comments	2374	2-11-2022
As Amended		3-7-2022
787 KAR 001:360E	48 Ky.R. 2937	4-28-2022
800 KAR 001:020E	48 Ky.R. 2174	12-17-2021
Am Comments	2554	3-15-2022
803 KAR 002:182E(r)	47 Ky.R. 2531	5-13-2021
	48 Ky.R. 2531	11-2-2021
803 KAR 002:321E	48 Ky.R. 2001	11-23-2021
Replaced	2141	7-5-2022
803 KAR 002:330E	48 Ky.R. 753	7-20-2021
803 KAR 002:426E	48 Ky.R. 2003	11-23-2021
Replaced	2143	7-5-2022
803 KAR 025:089E	49 Ky.R. 284	6-24-2022
803 KAR 025:195E	48 Ky.R. 2710	4-15-2022
Am Comments	48 Ky.R. 15	
803 KAR 025:305E	48 Ky.R. 1473	9-28-2021
Expired		6-25-2022
900 KAR 005:020E	48 Ky.R. 2368	1-27-2022
Am Comments	2715	4-15-2022
As Amended	306	
900 KAR 006:075E	48 Ky.R. 2370	1-27-2022
Am Comments	2716	4-15-2022
As Amended	306	
900 KAR 014:010E	48 Ky.R. 2548	2-21-2022
As Amended	2556	3-7-2022
Am Comments	2952	
As Amended	308	
901 KAR 005:120E	49 Ky.R. 286	6-30-2022
902 KAR 002:020E	48 Ky.R. 2939	4-26-2022
902 KAR 002:230E	48 Ky.R. 1474	10-1-2021
Expired		6-28-2022
902 KAR 002:240E	48 Ky.R. 1476	10-1-2021
As Amended	2014	12-9-2021
Expired		6-28-2022
902 KAR 002:250E	48 Ky.R. 1477	10-1-2021
Expired		6-28-2022
907 KAR 001:065E	49 Ky.R. 288	7-1-2022
907 KAR 023:020E	49 Ky.R. 9	6-1-2022
908 KAR 003:010E	48 Ky.R. 2550	2-21-2022
921 KAR 004:122E	48 Ky.R. 2005	12-1-2021
Replaced	2146	6-2-2022
922 KAR 001:360E	48 Ky.R. 2176	12-28-2021
Replaced	3014	7-20-2022
922 KAR 002:260E	49 Ky.R. 296	7-1-2022

ORDINARY ADMINISTRATIVE REGULATIONS

009 KAR 001:070	48 Ky.R. 2529	
As Amended	2955	
011 KAR 004:080		
Amended	48 Ky.R. 2779	
As Amended	309	
011 KAR 005:145		
Amended	48 Ky.R. 2781	

LOCATOR INDEX - EFFECTIVE DATES

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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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7 C.F.R.	922 KAR 002:160E		900 KAR 010:120
	922 KAR 002:160		907 KAR 001:044
16 C.F.R.	302 KAR 079:009		907 KAR 001:065E
	603 KAR 005:350		907 KAR 001:065
	922 KAR 001:350		907 KAR 023:020E
20 C.F.R.	922 KAR 002:160E		907 KAR 023:020
	922 KAR 002:160		921 KAR 001:380
26 C.F.R.	900 KAR 010:120		921 KAR 001:400
29 C.F.R.	900 KAR 010:120		922 KAR 001:300
34 C.F.R.	922 KAR 002:160E		922 KAR 001:350
	922 KAR 002:160		922 KAR 002:160E
40 C.F.R.	302 KAR 026:020		922 KAR 002:160
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	302 KAR 027:011	50 U.S.C.	106 KAR 001:141
	302 KAR 028:011		106 KAR 001:171

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
013 KAR 002:045	06-22-2022	Remain in Effect without Amendment
201 KAR 044:010	07-01-2022	Remain in Effect without Amendment
601 KAR 009:135	06-02-2022	Remain in Effect without Amendment
603 KAR 005:155	07-26-2022	Remain in Effect without Amendment
803 KAR 001:035	06-13-2022	Remain in Effect without Amendment
907 KAR 001:044	06-09-2022	Remain in Effect without Amendment
907 KAR 001:350	06-09-2022	Remain in Effect without Amendment
910 KAR 001:170	06-09-2022	To be Amended, Filing deadline 12-09-2023

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 49th 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
201 KAR 012:010	07-14-2022		
201 KAR 020:390	07-12-2022		
201 KAR 020:600	07-12-2022		
201 KAR 020:670	07-12-2022		

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